



STATUS OF SECURED TRANSACTIONS REFORM IN THE MIDDLE EAST AND NORTH AFRICA REGION

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ACRONYMS

EBRD	European Bank for Reconstruction and Development
MENA	Middle East and North Africa
SME	small and medium enterprise, small and medium-sized enterprise
UNCITRAL	United Nations Commission on International Trade Law

EXECUTIVE SUMMARY

Access to credit is a critical aspect of economic growth and a key driver for private sector development, yet it remains among the top limitations to private sector growth in the developing world. Secured transactions reforms have had a measurable impact on a number of economies that have experienced growth in access to secured credit, particularly for micro, small and medium-sized enterprises (MSMEs). In many developing economies, MSMEs are unable to access credit because they do not have collateral that financial institutions expect i.e., immovables. Moveable assets rather than land often account for most of the capital stock of MSMEs. According to the World Bank, in the developing world, 78 per cent of the capital stock of businesses is typically in movable assets such as machinery, equipment or receivables, and only 22 percent in immovable property.¹ But in many economies, movable property is unacceptable to lenders because the law does not provide sufficient protections. Modern secured transaction laws increase the availability of credit and reduce its cost, by ensuring that lenders can collect debt and enforce their rights in moveable property collateral through a timely and inexpensive process. Reforming a country's legal framework for secured transactions can help businesses — particularly MSMEs — leverage assets into capital for investment and growth. From a global perspective, the MENA region is significantly behind in pursuing and operationalizing reforms to increase access to and availability of secured credit.

The purpose of this report is to identify areas that can be reformed to improve the legal rights credit environment in the Middle East and North Africa (MENA) region (Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia, West Bank and Gaza, and Yemen) where 35 percent of firms identify access to credit as a major constraint. In particular, the goal is to highlight the degree of alignment of the MENA economies' legal frameworks with the critical features of a modern secured transactions framework based on international best practices as set forth by the just approved UN Commission on International Trade Law (UNCITRAL) Model Law on Secured Transactions (July, 2016)² and the UN Convention on Assignment of Receivables Convention in International Trade (2002).³ The report consequently concludes whether there is a need for comprehensive or partial reform in these economies.

METHODOLOGY and DESCRIPTION OF MATRIX FEATURES

The report relies upon review of publicly available assessments and reports conducted by other agencies, such as the World Bank and the European Bank for Reconstruction and Development, and other sources such as law review articles, law firms' client updates, and newsletters (and Arabic law texts when these sources did not provide sufficient information) to establish a "Middle East and North Africa Secured Transactions Assessments Matrix." The matrix covers i) the degree to which an economy's secured transactions framework is in alignment with international standards and whether it is in need of comprehensive or partial reform; ii) a country's score on the Getting Credit Strength of Legal Rights Index of the World Bank's 2017 Doing Business report; and iii) the following 11 features of a modern secured transactions framework designed to align with international best standards as provided in UNCITRAL texts:

¹ World Bank, Doing Business, Getting Credit, Why it Matters – Legal Rights, available at <http://www.doingbusiness.org/data/exploretopics/getting-credit/why-matters>.

² Available at http://www.uncitral.org/uncitral/en/uncitral_texts/security/2016Model_secured.html.

³ The Convention is available at http://www.uncitral.org/uncitral/en/uncitral_texts/security/2001Convention_receivables.html (last accessed March 2017).

1. Single Law That Regulates All Security Interests
2. Elimination of Secret Liens
3. One Registry for All Security Interests (including electronic capabilities and low fees)
4. Effective and Efficient Transfer of Interests in Receivables
5. Out-of-Court Enforcement
6. Debtor May Retain Possession or Control of Collateral
7. All or Any of the Debtor's Assets May Be Provided as Collateral
8. Crops May Be Provided as Collateral Independently from Land
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral
10. Predictable Priority Rules
11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations

A number of these features (1-3, 5, 7, 9, 11) repeat, either fully or partially, elements of the 2017 World Bank's Getting Credit Legal Rights Index.

MENA SECURED TRANSACTIONS ASSESSMENTS MATRIX

The matrix designates i) whether comprehensive or partial reform is needed to align a country's secured transactions legal framework with international best practices and standards; ii) a country's score on the Strength of Legal Rights Index; and iii) a "Yes" or "No" answer regarding the presence of each the above 11 features in the country's secured transactions legal framework.

Following the matrix, sections 4 through 13 of the report provide summaries and analysis of each MENA country's current legal provisions regarding each of the 11 matrix features.

CONCLUSIONS AND RECOMMENDATIONS

None of the 10 MENA countries provide one registry for all security interests (matrix feature 3) or effective and efficient transfer of interests in receivables (matrix feature 4). Only one MENA country, West Bank and Gaza, has a single law that regulates all security interests (matrix feature 1), an elimination of secret liens (matrix feature 2) and predictable priority rules (matrix feature 10). At the other extreme, all countries scored "Yes" for the debtor's ability to retain possession or control of collateral (matrix feature 6) and the ability for all or any of the debtor's assets to be provided as collateral (matrix feature 7). "Yes" and "No" responses appear in various combinations for the other features. Based on this analysis, eight of the 10 MENA countries were found to be in need of comprehensive reform; only Egypt and West Bank and Gaza were in need of partial reform. The latter could serve as a regional model.

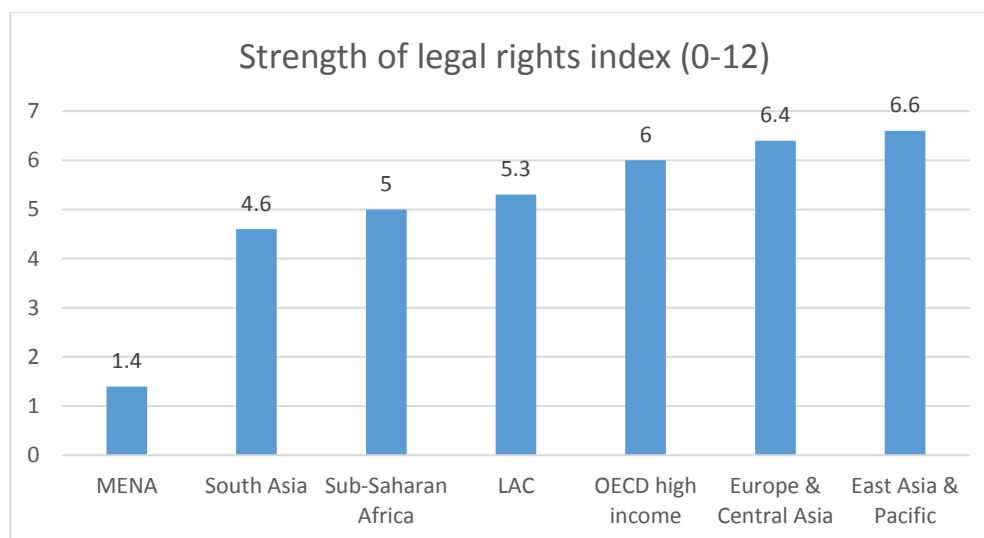
MENA economies should consider reforming their secured transactions frameworks along the lines set forth by the UNCITRAL in its Model Law on Secured Transactions and the United Nations Convention on the Assignment of Receivables in International Trade⁴ implementing secured transaction reforms based on these UNCITRAL instruments will promote MSME access to secured credit at a reasonable cost and enhance regional trade. The design and implementation of reforms should take into account each economy's credit practices and markets, the origins and defining institutions of their respective legal frameworks, and other local conditions. MENA countries should also learn from the experience of other economies that have successfully reformed their frameworks.

⁴ See <http://www.unidroit.org/instruments/security-interests/cape-town-convention> (last accessed March 2017).

INTRODUCTION

Access to credit is a critical aspect of economic growth and a key driver for private sector development. Despite the importance of access to credit, it remains among the top limitations to private sector growth in the developing world. Per the World Bank 2015 Small and Medium Enterprises (SMEs) Finance Brief, formal SMEs contribute up to 45 percent of total employment and up to 33 percent of national income (gross domestic product) in emerging economies and, compared with large firms, are less able to secure bank loans. SMEs rely on “personal” funds to launch and initially run their enterprises. Fifty percent of formal SMEs do not have access to formal credit. The financing gap is even larger when one takes into account micro and informal enterprises. According to the most recent World Bank Enterprise Survey, the Middle East and North Africa (MENA) region suffers from an acute shortage of SME finance, as only 25.6 percent of firms have access to loans or credit lines from financial institutions. The only region scoring lower is sub-Saharan Africa, with 22.6 percent. *Further, a mere 23 percent of firms in the MENA region use banks to finance investments, compared with 32.2 percent in Latin America and 34.3 percent in Organisation for Economic Co-operation and Development countries.*

The 2017 World Bank Doing Business Report rankings on getting credit further showcase the MENA region’s low standing globally in the effectiveness of their collateral and bankruptcy laws.



Thirty-five percent of firms in the MENA region identify access to credit as a major constraint. Only sub-Saharan Africa ranks lower at 36.8 percent. Countries such as Yemen, and West Bank and Gaza have an average of 50 percent of firms identifying access to credit as a constraint. Secured transactions reforms have had a measurable impact on a number of economies that have experienced growth in access to secured credit, particularly for SMEs. A 2013 World Bank study of economies that completed secured transactions reforms and established modern collateral registries found that in doing so, on average, access to finance in these economies increased by 8

percentage points, availability of working capital loans increased by 10 percent, interest rates reduced by 3 percentage points, and loan maturities extended by six months.⁵

Modern secured transaction laws and collateral registries based on the UNCITRAL Model Law on Secured Transactions and the Assignment of Receivables Convention have a dramatic impact on economic development. Collateral is the basis for free-flowing credit markets, reducing the potential losses lenders face from nonpayment. Because many countries do not have functioning laws and registries for secured transactions, the use of movable collateral (such as inventory, accounts receivables, crops, and equipment) is restricted, making land and buildings the primary collateral for loans. Reforming the framework for movable collateral lending allows businesses — particularly SMEs — to leverage their assets into capital for investment and growth. Modern secured transaction regimes increase the availability of credit and lessen the cost of credit.

Despite the potential benefits that accrue with better access to credit, the MENA region has been significantly behind in adopting modern secured transaction laws and establishing registries, and countries such as Egypt that have passed reforms supporting improved secured transactions regimes have had a difficult time operationalizing their improved procedures. The familiar constraints that impede the MENA region's progress in secured transactions reform include the lack of an adequate legal framework, absence of a registry for notices of security interests, lack of movable asset lending "know-how," and overall lack of interest.

Banks in MENA have generally not been willing to extend secured credit, and, when they do so, the credit is concentrated and channeled to a narrow pool of borrowers.⁶ MENA businesses finance 77 percent of their working capital and investments from internal resources.⁷ Nonbanks, such as suppliers and trading partners of MENA businesses, provide less than 10 percent of finance.⁸

The overarching purpose of this report is therefore to identify areas that can be reformed to improve the credit environment of the MENA economies by highlighting the inefficiencies of each country's secured lending legal framework and recommending means by which inefficiencies may be minimized or eliminated. However, this report does not suggest any concrete legislative drafting; neither does it propose the incorporation of specific language into legislation. That step in the reform process will only become necessary when the policymakers have made a commitment to modernizing their secured transactions legal frameworks.

In particular, the goal of this report is to highlight the core features of a modern secured transactions system and assess whether the current legal frameworks of the subject MENA economies (Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia, West Bank and Gaza, and Yemen) align with these features and consequently conclude whether there is a need for partial or comprehensive reform. For that reason, this report identifies possible areas for improvement in MENA secured transactions frameworks and proffers recommendations inspired by international

5 Inessa Love, Sole Martínez Pería and Sandeep Singh, *World Bank Collateral Registries for Movable Assets: Does Their Introduction Spur Firms' Access to Bank Finance?* Policy Research Working Papers (June 2013), available at <http://www.ifc.org/wps/wcm/connect/8891c280415edb709ba3bb9e78015671/Collateral%2BRegistries%2Bfor%2BMovable%2BAssets%2B%2BDoes%2BTheir%2BIntroduction%2BSpu%2BFirms%2BAccess%2Bto%2BBank%2BFinance.pdf?MOD=AJPERES> (last accessed December 2016).

⁶ EBRD, EIB and the World Bank, *What's Holding Back the Private Sector in MENA? Lessons from the Enterprise Survey*, at 35 (2016).

⁷ *Id.* 39.

⁸ *Id.*

best standards. The information provided will facilitate the modernization of secured lending laws in the MENA region, reducing transactional costs and attracting secured finance from foreign sources.

Ultimately, this report suggests that for an economy to have an effective, efficient, and affordable secured credit system, all of the positive features must be operative. Still, it is important to note, that this report and its “Middle East and North Africa Secured Transactions Assessments Matrix” present only preliminary findings for the subject MENA economies; determining whether all features are operative will require diagnostics or “road map” studies of the actual secured transactions customs and practices of each economy, an effort that exceeds the scope of this assessment. As an example, one feature measures whether the debtor may remain in possession of the collateral. Although that may generally be possible under the current legal framework, the mechanics and cost of perfecting a security interest whereby the debtor operates its business under the supervision of a collateral manager appointed by the secured creditor will be prohibitive for a vast majority of businesses. This is particularly true for those MENA economies where the civil code recognizes only the possessory pledge.

METHODOLOGY

This report examines the legal frameworks of 10 MENA economies (Egypt, Iraq, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia, West Bank and Gaza, and Yemen) that were in force at the time assessments were conducted in December 2016 and January 2017. The findings in this report are based primarily on publicly available assessments and reports conducted by other agencies, such as the World Bank and the European Bank for Reconstruction and Development (EBRD). Other major sources include law review articles, law firms' client updates, and newsletters. The full bibliography is attached under Annex I. Actual law texts were consulted only where these secondary sources did not provide an answer to one of the questions in the matrix. For the most part, such laws were available solely in Arabic, with only a few having English translations.

The report does not adopt a strict approach to assessing all the features described in the Secured Transactions Assessments Matrix nor in making recommendations for reform. For instance, with regard to the feature that measures whether all or any of the debtor's assets may be provided as collateral, all MENA economies scored positively even though no economy has enacted a law that provides for the creation of an "all assets" security interest in a single security agreement and under a single law. In all the subject economies, creditors would need to comply with multiple laws to create an effective security interest over all assets of the debtor, which may significantly increase transactional costs due to the need to execute multiple agreements and complete various registrations. Additionally, the subject MENA economies have scored positively on the feature that measures whether the debtor may remain in possession or control of the collateral. Even though the main security device — the possessory pledge — requires delivery of possession to the secured creditor, other laws, such as the leasing law, and devices, such as non-notification transfer of receivables, may allow the debtor to retain possession and control of the collateral. Accordingly, the matrix and the individual economy reports neither assess the effectiveness of the existing features in day-to-day practice nor take into account the costs associated with the implementation of particular features. In essence, the methodology of the report is limited to the analysis of the black-letter law as compared with the best international standards set forth in the UNCITRAL Model Law on Secured Transactions and the UN Assignment of Receivables Convention in International Trade.⁹

⁹ Other key international instruments include the United Nations Commission on International Trade Law, UNCITRAL Legislative Guide on Secured Transactions (2010), available at http://www.uncitral.org/pdf/english/texts/security-ig/e/09-82670_Ebook-Guide_09-04-10English.pdf (last accessed March 2016), United Nations Commission on International Trade Law, UNCITRAL Guide on the Implementation of a Security Rights Registry (2014), available at <http://www.uncitral.org/pdf/english/texts/security/Security-Rights-Registry-Guide-e.pdf> (last accessed July 2016) and the World Bank, Secured Transactions Systems and Collateral Registries Toolkit (2010) available at http://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/industries/financial+markets/publications/toolkits/secured+transactions+systems+_+collateral+registries+toolkit (last accessed July 2016). See also United Nations Commission on International Trade Law, Hague Conference and Unidroit Texts on Security Interests: Comparison and analysis of major features of international instruments relating to secured transactions, available at http://www.uncitral.org/uncitral/en/uncitral_texts/security/2011UNCITRAL_HCCH_Unidroit_texts.html (last accessed July 2016).

DESCRIPTION OF MATRIX FEATURES

The MENA Secured Transactions Assessments Matrix comprises three parts: i) indication as to whether the economy's secured transactions framework is in alignment with international standards or is in need of either a comprehensive or partial reform; ii) reference to each economy's score in the Strength of Legal Rights Index under the World Bank's Doing Business 2017 Getting Credit indicator; and iii) indication as to whether the economy's legal framework has or does not have each of the 11 features of a modern secured transactions framework.

These features have been designed to align with those included in international best standards, particularly those set forth by the UNCITRAL Model Law on Secured Transactions and the UN Receivables Convention. These features are crucial to any successful secured transactions framework.

LEVEL OF REFORM NEEDED

The first part of the matrix indicates the degree to which an economy's secured transactions framework is in alignment with international standards and whether the economy is in need of either a comprehensive or partial reform. The factors considered for these designations are described below.

Comprehensive Reform Needed

The MENA economies that have not undertaken reform efforts consistent with the international best standards may need to undertake a comprehensive reform that incorporates all of the features listed below. Successful implementation of these features is also predicated upon the identification of existing practices that hinder credit or that may increase the cost of credit, as well as upon providing adequate solutions for the elimination of such practices. In order to ensure the success of reform efforts, implementation should include training, institutional capacity building, software development and hardware acquisition, best-practice manuals, and implementation of international banking and accounting standards.

Partial Reform Needed

For MENA economies that have embarked on reform efforts consistent with international best standards, yet are lacking two or more of the features described below, they will need to implement those features as well as engage in training, institutional capacity building, drafting of best-practice manuals, and implementation of international banking and accounting standards, where necessary. Successful implementation of these features is also predicated upon the identification of existing practices that hinder access to credit or that may increase the cost of credit, as well as upon providing adequate solutions for the elimination of such practices.

No Reform Needed

Economies that have already implemented modern secured transactions frameworks that are in alignment with international best standards will generally not need reforms. These economies either have perfect or almost perfect scores under each of the matrix features. Unfortunately, this is not the case in the evaluated MENA economies.

STRENGTH OF LEGAL RIGHTS INDEX SCORE

The World Bank's annual Doing Business Report's Getting Credit indicator measures the legal rights of borrowers and lenders but is not completely synonymous with secured transactions. Even though the secured transactions framework is a critical component within this indicator, the other component includes insolvency regimes and credit reporting. The Getting Credit Strength of Legal Rights Index measures the degree to which secured transactions laws protect the rights of borrowers and lenders and thus facilitate lending. The index ranges from 0 to 12, with higher scores indicating that these laws are better designed to expand access to credit.¹⁰

The features included in this report against which the MENA economies' legal frameworks have been examined, to some extent, overlap with the features that determine the economy's score in the Strength of Legal Rights Index. For instance, feature number 1 in the matrix is similar to feature number 1 in the index. In contrast, feature number 6 in the matrix only partially overlaps with feature number 6 of the index. While the former takes into account the level of registration fees, the latter also focuses on whether the registry is geographically unified. Overall, a few of the matrix features fully overlap with the index features, while others only partially overlap and the rest are completely different. Included below is a table of the fully overlapping and partially overlapping matrix features.

Matrix Features	Corresponding Features in the Strength of Legal Rights Index
1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner	1. Does an integrated or unified legal framework for secured transactions that extends to the creation, publicity, and enforcement of functional equivalents to security interests in movable assets exist in the economy?
2. Elimination of Secret Liens: Whether "secret liens" have been eliminated through a transparent notice-based system	7. Does a notice-based collateral registry exist in which all functional equivalents can be registered?
3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees	6. Is a collateral registry in operation for both incorporated and nonincorporated entities that is unified geographically and by asset type, with an electronic database indexed by debtor's name?
5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement	12. Does the law allow parties to agree on out-of-court enforcement at the time a security interest is created? Does the law allow the secured creditor to sell the collateral through public auction and private tender, as well as for

¹⁰ For more information on the Strength of Legal Rights Index and Doing Business Getting Credit Methodology see World Bank Group Doing Business, Getting Credit, Strength of Legal Rights Methodology, available at <http://www.doingbusiness.org/methodology/getting-credit> (last accessed March 2017).

	the secured creditor to keep the asset in satisfaction of the debt?
7. All or Any of the Debtor's Assets May Be Provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral	3. Does the law allow businesses to grant a nonpossessory security right in substantially all of its assets, without requiring a specific description of collateral?
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)	4. May a security right extend to future or after-acquired assets and may it extend automatically to the products, proceeds, or replacements of the original assets?
11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations	5. Is a general description of debts and obligations permitted in collateral agreements; can all types of debts and obligations be secured between parties; and can the collateral agreement include a maximum amount for which the assets are encumbered?

As such, the approach taken for this report was to conduct an individual analysis on each of the overlapping indicators rather than to rely only on the assessments and conclusions of the World Bank report. As a result, some answers in the matrix may deviate from those included in the index.

SECURED TRANSACTIONS MATRIX FEATURES

1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

Many legal systems still apply multiple laws to regulate security interests, primarily according to the types of borrowers, security devices, and assets — this generates uncertainty, inconsistency, and unpredictability. Some of the subject MENA economies have also adopted secured transactions laws that expressly exclude certain transactions — for example, financial leases or factoring of receivables — on the basis that such devices do not involve a security interest. The multiplicity of laws, each with its own perfection and priority rules, creates the risk of conflicts and increases the monitoring burden of the secured creditor who, for instance, must modify the credit relationship under certain circumstances (e.g., when an individual borrower incorporates and becomes subject to a different law). Furthermore, the multiplicity of laws increases transactional costs, forcing secured creditors to execute more than one security agreement and effectuate multiple registrations in order to comply with the applicable laws.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Some systems permit certain rights in the collateral to remain unregistered and not otherwise subject to any form of public notice, which generates uncertainty and unpredictability because such rights are typically intended to be effective against third parties. An essential characteristic of a registration system measured under this feature is its notice-filing nature, which presupposes the

submission of a standard form that provides only the fundamental information relating to a security interest rather than requiring submission of the underlying security agreement.

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

There must be a single registry where notices of all security interests and their functional equivalents are registered. Additional registries for rights to specific assets, such as aircraft or intellectual property rights, may exist and require registration of the respective security interests therein. For purposes of registrations and searches, the registry should be accessible electronically. Exclusive electronic access further enhances the efficiency of the registry and reduces operational costs. Fees should not be based on or progressively increase according to the amount of the secured obligation, but rather should be low and flat, reflecting the automated nature of the processing conducted without any notarization or validation by the registrar.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

Some systems enforce limitations on the transferability of receivables which prevent many SMEs, particularly suppliers of large companies, from using them as collateral. Laws should facilitate the utilization of all types of assets as collateral, even at the expense of intruding into the parties' contractual freedom, consistent with international standards set forth in the UNCITRAL Model Law and the UN Assignment of Receivables Convention. At the same time, the rights of account debtors whose debts have been assigned or encumbered by a security interest should be protected and their duties or obligations unaffected.

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

Upon default, a creditor should be able to take possession of the collateral, or collect receivables directly, and dispose of it without the need for a lengthy and costly judicial process. Relevant international standards also stress the importance of the use of alternative dispute resolution mechanisms, including arbitration. For example, the UNCITRAL Model Law includes a provision (Article 3) stating that "Nothing in this Law affects any agreement to the use of alternate dispute resolution, including arbitration, mediation, conciliation, and online dispute resolution." A number of the top-ranked economies in the World Bank Doing Business Report (e.g., Colombia, and Honduras) have included a specific provision on arbitration in their secured transactions laws in recognition of the fact that ineffective judicial mechanisms in their economies have a negative impact on the availability and cost of credit.

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

In contrast to some legislative frameworks that require the secured creditor to take possession of the collateral, in a modern secured transactions system the debtor may retain the asset provided as

collateral and use it — including to generate income (i.e., the proceeds) from which to repay the loan. This feature measures not only the ability of the debtor to retain possession of some tangible asset, such as machinery, but also the ability to control intangible assets, such as bank accounts. While most consumer loans (such as those used to purchase a vehicle or household appliances) allow borrowers to take immediate possession, some laws require that the relevant equipment and inventory of a business be delivered to the secured creditor who takes possession by appointing a collateral manager.

7. All or Any of the Debtor's Assets May Be Provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Any asset with value in the marketplace should be capable of being used as collateral — including inventory, equipment, accounts receivable, and other “intangibles,” such as intellectual property rights. The law may limit the ability of the debtor to create a security interest in certain types of assets, such as when the only security device recognized by the law is a pledge that requires delivery of collateral to the secured creditor. Laws may also impose limitations on the ability of the secured creditor to encumber the entire business of the debtor, such as under the pledge of enterprise when it does not extend to inventory.

8. Crops May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Systems that allow crops to be used as collateral separate from land enable farmers to have greater access to credit without putting the underlying land at risk. Furthermore, in many cases the farmer does not own the underlying land, which eliminates the possibility to create a security interest in growing crops. In some legal systems, even livestock may be characterized as immovable property, which may impede its use as collateral for a loan.

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

When dealing with inventory, crops, and accounts receivable, there may be significant turnover of collateral. This feature enables an automatic extension of the security interest to any inventory or crops acquired in the future, as well as to any payments received from the collection of accounts receivable and other proceeds. Laws that do not enforce security agreements that purport to create a security interest in future assets once they are acquired by the debtor, significantly increase transactional costs because of the requirement to execute new agreements or amendments to existing agreements to cover future assets as they are acquired by the debtor.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

Clear priority rules are an essential feature for a modern secured transactions regime. In the absence of such rules, creditors would not be confident in taking security interests because of the uncertainty that their rights could be preempted by claims that were impossible, or extremely

difficult, to discover. Priority rules not only affect competition between secured creditors but also the rights of buyers and nonconsensual creditors, such as judgment lienholders. Proper application of the priority rules to a large extent depends on the effectiveness of the registry system, which can resolve a vast majority of conflicts among competing claimants. Priority rules lack predictability especially when the legal framework for various secured transactions is not unitary.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Collateral may be described in the security agreement and registration forms (notices) simply, such as “all inventory” or, when applicable, by using the serial number such as “the John Deere Tractor VIN ABC123.” The actual description may vary depending on the nature of the transaction and the collateral involved; generic for inventory and specific for a single equipment or vehicle. It is important for the law to provide for such flexibility in describing the collateral, in both security agreements and registration forms, so as to eliminate the risk that some assets may not be covered by a collateral description and the cost of frequently needing to amend security agreements and registrations. Similarly, it is critical for the legal framework to allow generic descriptions of obligations that may be secured by the collateral.

SECTION NO. 3

MIDDLE EAST AND NORTH AFRICA SECURED TRANSACTIONS ASSESSMENTS MATRIX

Feature	Comprehensive Reform Needed	Partial Reform Needed	World Bank Getting Credit 2017 Score	Single Law That Regulates All Security Interests	Elimination of Secret Liens	One Registry for All Security Interests	Effective and Efficient Transfer of Interests in Receivables	Out-of-Court Enforcement	Debtor May Retain Possession or Control of Collateral	All or Any of Debtor's Assets May Be Provided as Collateral	Crops and Livestock May Be Provided as Collateral Independently from Land	Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	Predictable Priority Rules	General or Simple Description of Collateral and Secured Debts or Obligations
Country														
Egypt		Yes	2	No	No	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes
Iraq	Yes		1	No	No	No	No	No	Yes	Yes	Yes	No	No	No
Jordan	Yes		0	No	No	No	No	No	Yes	Yes	Yes	Yes	No	Yes
Lebanon	Yes		2	No	No	No	No	No	Yes	Yes	No	No	No	No
Libya	Yes		0	No	No	No	No	No	Yes	Yes	Yes	Yes	No	Yes
Morocco	Yes		2	No	No	No	No	No	Yes	Yes	No	No	No	No
Syria	Yes		1	No	No	No	No	No	Yes	Yes	Yes	No	No	No
Tunisia	Yes		3	No	No	No	No	No	Yes	Yes	No	No	No	No
WB/Gaza		Yes	0	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Yemen	Yes		0	No	No	No	No	No	Yes	Yes	No	No	No	No

SECTION NO. 4

EGYPT

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	Yes
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	Yes
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	2
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

No. Though Egypt enacted a new secured transactions law, Law No. 115 of 2015 Regulating Movable Security, it does not apply to pledges created under the Civil Code, including the pledge over an enterprise and securities such as shares and bonds, which remain governed by the Commercial Code. The Law Regulating Movable Security purports to apply to financial and operating leases with a duration of at least six months as well as the rights of owners of consigned goods, thus attempting to follow the functional approach. The law has not been operationalized yet awaiting the establishment of a registry.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. The Law Regulating Movable Security does not provide for the establishment of a single registry for all security interests because it does not apply to a number of pledges.

For instance, the enterprise pledge must be registered with a notary public.¹¹ Pursuant to the Fonds de Commerce Sale and Mortgage Law No. 11 of 1940, the enterprise pledge must also be annotated with the Commercial Registry Authority under the name of the pledger/company.¹² The registry to be established under the Law Regulating Movable Security requires submission of an electronic form that identifies the parties, the collateral, and the duration for which the registration shall remain effective, rather than a security agreement.

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. As stated above, the Law Regulating Movable Security does not apply to all security interests. However, for the security interests to which it applies, the law empowers a competent administrative authority to establish a public registry that should operate electronically. The registry regulations have recently been issued, but a registry is yet to be established. The law also contemplates registration of tax and judgment liens and provides that searches should be subject to a fee capped at 500 pounds per annum. This provision of the law is difficult to interpret, and it is unclear how the search fees will be allocated among the users. Pledges of shares must be registered with the *Misr* for Central Clearing, Depository, and Registry. Finally, pledges are subject to the payment of stamp duties that may range up to 4 percent of the loaned amount and notarial fees, all of which increase the cost of secured transactions.¹³

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

No. The receivables debtor must acknowledge an assignment of the receivables in writing certified by the notary public, or a notification of assignment must be delivered through a bailiff.¹⁴ Transfers of receivables to factoring companies are also governed by regulations¹⁵ issued by the Egyptian Financial Supervisory Authority, which is drafting a new factoring law.¹⁶

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

¹¹ Amira Sherif and Ahmed Farahat, *Lending and Taking Security in Egypt: An Overview*, PRACTICAL LAW (2016).

¹² Hossam Gramon & Nadia Abdallah, *2017-1 GTDT: Loans & Secured Financing Egypt*.

¹³ Sherif and Farahat, *supra* n 11.

¹⁴ *Id.*

¹⁵ Such as the Decree no. 1446 of 2003 issued by the Prime Minister regarding regulations and provisions related to factoring.

¹⁶ Sherif and Farahat, *supra* n 11.

Yes. The Law Regulating Movable Security expressly recognizes extrajudicial enforcement with respect to receivables, instruments, and bank accounts. For other collateral, if the security agreement contains an authorization to sell the collateral extrajudicially, the secured creditor must give a notice to the debtor and grant it a grace period of five days to cure the default before proceeding to dispose of the collateral. In the absence of such an authorization, the secured creditor must obtain a court order, but it may also proceed extrajudicially if the debtor consents to such a procedure. Banking law also provides for simplified enforcement procedures for security interests taken by banks.¹⁷ An enterprise pledge may be enforced only judicially after the debtor has been given a grace period of eight days to cure the default.¹⁸

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. The Law Regulating Movable Security allows the creation of nonpossessory security interests. Under the enterprise pledge governed by the Civil Code, the debtor may also remain in possession of the collateral.

7. All or Any of the Debtor's Assets May Be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. The Law Regulating Movable Security defines collateral as any tangible or intangible property, whether current or future. Furthermore, it provides an illustrative list of assets that could be used as collateral, including bank accounts, accounts receivable, instruments, equipment, inventory, and fixtures. However, the law specifically prohibits encumbrances over properties owned by the state, any permit or licenses granted by the state, and also any assets owned by banks except their equipment, which is a highly unusual exception for modern secured transactions laws. Certain consumer goods for personal use, not subject to acquisition security interests, may not be encumbered as well.

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Animals and growing crops are characterized as movable tangible property.¹⁹

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

¹⁷ Gramon & Abdallah, *supra* n 12.

¹⁸ *Id.*

¹⁹ Sherif and Farahat, *supra* n 11.

Yes. Under the Law Regulating Movable Security, a security interest may extend to future tangible or intangible property if covered by the security agreement. Moreover, the law specifically defines future movable property. Certain assets, such as insurance policies, inheritance, and wages, may not be encumbered as future collateral. The law also allows the secured creditor to follow the collateral into the hands of transferees who acquired it outside the ordinary course of business, and the security interest will also extend to any proceeds received upon disposition of the collateral. However, those pledges that continue to be governed by the Civil Code may not extend to future assets.²⁰

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The Law Regulating Movable Security bestows priority on the first perfected security interest, even as against pledges that may be perfected under the Civil Code. In addition, as long as the security interest has been perfected prior to the declaration of bankruptcy, the collateral shall not become a part of the estate and thus is not subject to the rights of other creditors. However, the priority rules do not take into account the rights of those creditors who have provided credit enabling the debtor to acquire a new asset, under either retention of title or financial lease, which is common for modern secured transactions laws.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Under the Law Regulating Movable Security, the security agreement may provide for the creation of a security interest in a single asset or a fluctuating group of assets. The collateral must be described specifically only in the case of consumer goods; thus generic descriptions of commercial assets would be recognized as valid. Collateral may secure any obligations, including future debts up to an amount fixed in the security agreement.²¹ A security agreement may be executed electronically.

²⁰ *Id.*

²¹ Gramon & Abdallah, *supra* n 12.

SUMMARY OF SECURED TRANSACTIONS MATRIX FEATURES

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	No
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	Yes
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	1
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

I. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

No. The Civil Code and the Code of Commerce govern secured transactions in a manner that is neither comprehensive nor unitary.²² For instance, receivables are governed by two separate laws — one governing its pledge and the other an outright assignment.²³ Additionally, some aspects of secured transactions are governed by the Companies Law and the Notary Public Law. The Iraqi legal framework has not adopted a functional approach. The Civil Code recognizes sales with a reservation of ownership, under which the seller effectively retains ownership until the full payment of the

²² For the English translation of the Civil Code see <http://landwise.resourceequity.org/record/750> (last accessed December 2016).

²³ Ronald C.C. Cuming, *Secured Transactions Law Reform, Description and Assessment of Current Iraqi Secured Transactions Law and Approach to Reform*, Iraqi II Economic Growth Project, USAID Iraq Economic Governance II Project, 5 (2005).

purchase price, and also contains rules on leases, which, however, primarily govern leases of immovables.²⁴

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Pledges, under the Civil Code and the Code of Commerce do not require public registration to be effective against third parties. Furthermore, reservations of ownership, leases, and transfers of receivables, whether as security or outright, do not require any form of public notice. Some limited exceptions, such as those related to machine pledges under the Notary Public Law, exist; i.e., such pledges require registration.²⁵

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. Pledges of movables do not require any registration as a condition for their perfection. A pledge of shares issued by a joint stock or limited liability company requires registration in the company’s special register under the Company Law.²⁶ Registration of such pledges with the Registrar of Companies may also be effectuated, but such registrations have no legal effect and are rather done for increased comfort.²⁷

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

No. A transfer of a receivable that is subject to a restriction has no effect. Furthermore, the receivables debtor must be notified,²⁸ and the secured creditor must take possession of the agreement that generated the receivable (e.g., a sale or service contract)²⁹ for the transfer to become valid.

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

²⁴ *Id.* at 10.

²⁵ Dahlia Zamel, *Secured Lending Transactions in Iraq: Defining Market Practice in a Volatile Environment*, IBA Banking Law Newsletter, 31 (2014).

²⁶ Cuming, at *supra* n 23, at 4.

²⁷ Zamel, *supra* n 25, at 31.

²⁸ Cuming, *supra* n 23, at 6.

²⁹ Mark J. Sundahl, *Iraq, Secured Transactions, and the Promise of Islamic Law*, 40 Vanderbilt Journal of Transnational Law, 1336 (2007).

No. Enforcement of a pledge requires a court order. Moreover, the Code of Commerce requires the secured creditor to deliver a demand for payment to the debtor, who will have a period of time to cure the default. Similarly, Islamic law requires authorization of the court for the sale of a pledged object. However, this general limitation is moderated by the ability of the debtor to appoint the secured creditor as its agent; a sale of the collateral by the secured creditor acting as the debtor's agent may not require a court order.³⁰ The Civil Code allows the secured creditor to proceed extrajudicially, but it applies only with respect to pledges created by individuals.³¹ The remedy of taking the collateral in satisfaction of the secured obligation is not recognized.³²

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. The possessory pledge allows the debtor to remain in physical possession of the collateral that the secured creditor may hold constructively through an agent. However, this mechanism is not comparable to a nonpossessory pledge that may be perfected by registration because the cost of constructive possession could be significant and is available only for large transactions. An asset may also be in possession of the debtor under a sale with reservation of ownership, lease, or machine pledge. Islamic law does not strictly require delivery of collateral to the secured creditor.³³

7. All or Any of the Debtor's Assets May Be provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. Any movable property, tangible or intangible, may be provided as collateral to the extent it has pecuniary value.³⁴ The Civil Code requires that the asset must be capable of transfer. However, the mechanics of perfecting security interests over movable assets effectively prevent or unduly increase the cost of secured transactions because tangibles must be delivered to the pledgee and a pledge of a receivable must be perfected by delivery of a document creating the receivable to the account debtor.³⁵

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

³⁰ *Id.* at 1331.

³¹ *Id.* at 1341.

³² Zamel, *supra* n 25, at 32.

³³ Sundahl, *supra* n 29, at 1317.

³⁴ Dan E. Stigall, *A Closer Look at Iraqi Property and Tort Law*, 68(3) *Louisiana Law Review* 771 (2008).

³⁵ Cuming, *supra* n 23, at 3.

Yes. Land includes anything that is affixed to it and may not be removed without causing damage.³⁶ Livestock is not affixed to land and is treated as movable.³⁷ Although, under the Civil Code, ownership of land includes everything above and below it as far as can be usefully enjoyed, and the parties may by an agreement separate the assets above and below it. A mortgage of land will extend to its accessories, which include growing trees, but neither crops nor livestock are mentioned as accessories.

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. Under the Civil Code, a pledge may be created only over the assets that the debtor presently owns.³⁸ Similarly, the Civil Code does not permit bulk assignments of receivables or pledges of future receivables.³⁹ Islamic law also prohibits the creation of encumbrances over future assets.⁴⁰

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The fragmented nature of the secured transactions framework is not suitable to a clear and predictable set of priority rules. Priorities between competing pledges are determined according to the date of execution of security agreements rather than some transparent method like registration. Furthermore, the state privileges for owed taxes and duties have superpriority and are not capped, which further undermines the predictability of the priority framework.⁴¹ Notably, the requirement to transfer possession of the pledged asset to the secured creditor minimizes the risk of competing claims because it effectively prevents the debtor from creating multiple security interests over the same collateral.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. The Civil Code requires “adequate” descriptions of the collateral and secured obligations. However, the level specifically expected by the courts remains uncertain.⁴²

³⁶ Stigall, *supra* n 34, at 777.

³⁷ *Id.* at 772.

³⁸ See also Zamel, *supra* n 25, at 30.

³⁹ Cuming, *supra* n 23, at 6.

⁴⁰ Sundahl, *supra* n 29, at 1324.

⁴¹ Cuming, *supra* n 23, at 13.

⁴² Sundahl, *supra* n 29, at 1339.

The Civil Code allows the collateral to secure any future obligations, whether or not they are determinable when the security agreement is entered into. However, supergeneric references to “all amounts owed to the secured creditor” are not permitted.⁴³ There is some uncertainty as to whether the Islamic law allows collateral to secure any future obligations that do not exist when the security agreement is entered into.⁴⁴ Clauses in security agreements that purport to extend the security interest to future assets are void.

⁴³ Zamel, *supra* n 25, at 32.

⁴⁴ Sundahl, *supra* n 29, at 1327-1328.

SUMMARY OF SECURED TRANSACTIONS MATRIX FEATURES

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	No
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	Yes
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	0
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

No. There is no single law that regulates all security interests in a unitary, functional, and comprehensive manner.⁴⁵ The Jordanian legal framework allows for the creation of a wide range of security interests⁴⁶ under different sources of secured transactions legislation: the Civil Code, Law No. 1-2012 on Using Movable Property as Security for Debt, the Commercial Code, Law No.45-2008 Relating to Financial Leasing, and Law No. 25-2007 Relating to Execution. The application of the aforementioned laws depends on various factors, such as the nature of the debtor who is eligible to create a security interest. For instance, Law No. 1-2012 on Using Movable Property as Security for Debt regulates only pledges over movable property belonging to an enterprise (*fonds de*

⁴⁵ WORLD BANK, DOING BUSINESS 2017: Jordan 60 (2016).

⁴⁶ EBRD, *Commercial Law of Jordan* (July 2013) 51.

commerce) of companies and merchants, leaving individuals and unregistered entities out of the scope of the law. The Civil Code regulates possessory pledges. The possessory pledge is also regulated by the Commercial Code, and it is commonly used to create security over certain types of movable assets, e.g., equipment and machinery.⁴⁷ Gaps in the Civil Code's provisions may be filled in with Islamic law, which is a secondary source of legislation.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Jordan has not established a transparent notice-based system for registrations relating to security interests. Although the Commerce Registry has been established and is accessible by the public, it is not a transparent notice-based registry, and its use is limited to pledges over enterprise. Registration requires submission of the document evidencing the creation of a pledge. There are no registration requirements for many secured transactions, including assignments of receivables.

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. There is no unitary registry for all security interests in Jordan.⁴⁸ The Commerce Registry is a general commercial registry for the purpose of registering the dealings of companies and traders. Nonpossessory pledges over registrable assets such as vehicles, shares, sea vessels, aircrafts, intellectual property, etc., require registration in the respective specialized registries.⁴⁹ For instance, the Lien Registry at the Traffic Department registers pledges over motor vehicles.⁵⁰ According to Law No. 1-2012 on Using Movable Property as Security for Debt, the registrar must ensure that the deed creating a security interest has been properly executed and signed, and that it contains the prescribed information. Effectiveness of the security interest against the debtor is conditioned on the registration of the deed. Registration of financial leases is optional in the Registry of Leased Movable Assets. This Registry of Leased Movable Assets is maintained by the Ministry of Industry and Commerce and is accessible to the public. The list of leased assets over which rights may be registered in the registry is prescribed by the regulations.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

⁴⁷ *Id.* at 52.

⁴⁸ World Bank, *Doing Business 2017: Jordan* 60 (2016).

⁴⁹ EBRD, *supra* n 46, at 52.

⁵⁰ Hawkamah & World Bank, *Jordan, in Study on Insolvency Systems in the Middle East and North Africa* 27.

No. Under the Civil Code, the consent of the three parties (the transferor, the transferee, the debtor) is required for the valid transfer of a receivable. The pledge over receivables can be created by delivering the deed evidencing the receivable to the secured creditor. To be effective against third parties, the receivable debtor must have been notified officially or must have consented to the transfer in a notarized document.

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

No. Self-help remedies are not recognized under Jordanian law.⁵¹ In fact, regarding the commercial pledge, the Commercial Code prohibits any clause in the security agreement that allows the secured creditor to take possession or dispose of the asset without following judicial procedures. Also, Law No. 1-2012 on Using Movable Property as Security for Debt prescribes that enforcement of a pledge is to be conducted according to the general law of execution. As a result, enforcement is governed by Law No. 25-2007 Relating to Execution and conducted by the Department of Execution, which is situated within the court structure and headed by a qualified judge. The debtor can object to the amount of the debt claimed by the secured creditor. However, if the creditor proves that its claim is valid, the debtor is sanctioned with a fine equal to one-fifth of the disputed amount and obliged to pay all legal expenses.⁵²

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. According to Law No. 1-2012, the debtor may retain possession of all assets that constitute *fonds de commerce* and may continue to use them. Also, a nonpossessory pledge may be taken over certain types of registrable movable assets, such as motor vehicles and shares.⁵³ However, in the Civil Code and Commercial Code, the general security interest is the possessory pledge, which cannot be effective against third parties without delivery of possession of the asset to the secured creditor or to an impartial third party called “Al Adel.” The pledge must also be created in a notarized document.

7. All or Any of the Debtor’s Assets May Be Provided as Collateral: Whether all or any of the debtor’s assets may be provided as collateral

Yes. Under the Civil Code, any assets may be used as collateral unless specifically prohibited by law or public order. Security interests can be created over a range of assets such as equipment and other machinery, shares, bank accounts, receivables, insurance, etc. Based on Law No. 1-2012 on Using Movable Property as Security for Debt, in the case of the enterprise pledge, all movable assets of the borrower that constitute the *fonds de commerce* can be pledged. However, no Jordanian law expressly

⁵¹ Herbert Smith Freehills, Jordan, in *Middle East: Lending and Taking Security* 23 (2nd ed. May 2014).

⁵² Such fine should discourage debtors from objecting to a valid claim. EBRD, *supra* n 46, at 52.

⁵³ EBRD, *supra* n 46, at 51.

recognizes and permits the creation of a single security interest over all assets of the debtor.

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. The Civil Code stipulates that ownership of land is synonymous with ownership of everything above or below the land, so that the right of ownership extends to all things that cannot be separated from the land without perishing, deteriorating, or otherwise being altered. However, the Civil Code does not characterize crops and livestock as immovable by destination. As a result, they are movable assets. However, a mortgage of an immovable created under the Civil Code would extend to crops and could thus compete with the pledge over a growing crop.

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. According to Law No. 1-2012 on Using Movable Property as Security for Debt, a security interest can extend to future assets. However, the Commercial Code is not similarly permissive with respect to the pledges covered therein. Those pledges will extend to future assets only if they are replacements of the existing collateral. As for the proceeds, the Civil Code allows the secured creditor that is in possession of the collateral to claim the proceeds. However, the Civil Code limits the notion of proceeds only to fruits and benefits generated by the collateral.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The multiplicity of legal sources governing security interests and the absence of a single modern registry does not create a predictable regime with clear priority rules.⁵⁴ Law No. 1-2012 on Using Movable Property as Security for Debt provides that after satisfying the privileges identified in the Civil Code, a secured creditor's claim shall be satisfied, unless there are other creditors holding possessory pledges or having pledges over the movable property registered in a specialized registry, regardless of the time of registration. In the case of competing secured creditors who have acquired their rights under Law No. 1-2012 on Using Movable Property as Security for Debt, the time of the registration determines priority. Besides, the law elevates certain statutory claims, such as taxes, expenses to keep and repair the movable asset, and employee wages, above the claims of secured credit.

⁵⁴ EBRD, *supra* n 46, at 51.

II. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Law No. 1-2012 on Using Movable Property as Security for Debt allows future debts to be secured with the collateral as long as the security agreement includes an indication of the maximum amount. This law does not require a specific description of the pledged assets, allowing the enterprise as a whole to be used as collateral. This would also apply to inventory which the Commercial Code defines as being part of the enterprise. However, the effectiveness of the pledge over inventory against third parties requires the secured creditor to take possession, which may be constructive, such as by taking a representative document of title (e.g., a warehouse receipt) or appointing a collateral manager.

SECTION NO. 7

LEBANON

SUMMARY OF SECURED TRANSACTIONS MATRIX FEATURES

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	No
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	No
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	2
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

No. A number of laws govern security interests in personal property.⁵⁵ They include, inter alia, the Code of Commerce, the Code of Obligations and Contracts, Annex to the Code of Obligations and Contracts Relating to the Pledge of Movable Assets, Legislative Decree Relating to the Fonds de Commerce, the Code of Money and Credit, Asset Securitization Law, and the Law on Leasing Operations. The Code of Commerce regulates all commercial transactions and the creation of pledges over business assets, securities, etc., whereas the Code of Obligations and Contracts covers mortgages. The

⁵⁵ World Bank, Doing Business 2017: Lebanon 62 (2016).

Law on Leasing Operations stipulates the requirements for the registration of a lease agreement.⁵⁶

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. A notice-based system does not exist for the registration of notices with respect to security interests. Some secured transactions are subject to registration.⁵⁷ With the exception of the motor vehicles registry, these registries are paper-based and localized, i.e., where the debtor is situated.⁵⁸ For example, a pledge over an enterprise will be registered in the special commercial register of the relevant court of first instance.⁵⁹ As such, a secured creditor is required to locate the exact registry in which a security interest over an asset may have been registered in order to discover the existence of any liens against that asset.⁶⁰ A pledge of receivables is not required to be registered. Instead, its creation and perfection is conditional on the notification of a written deed to the receivables debtor.

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. A number of registries exist to register the different types of security interests. For example, a pledge of registered securities, such as shares, is perfected by registration in a company's register of shareholders. A pledge of a motor vehicle may be perfected by registration in the motor vehicle registry. Moreover, a lease agreement is subject to registration in two registers: i) registration in the commercial register of the court of first instance and ii) registration in the civil institutions register of the court of first instance in Beirut.⁶¹ Also, pledges over *fonds de commerce* must be registered at the Commercial Registry maintained by the First Instance Tribunal.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

⁵⁶ Banque du Liban, *Establishment and Activities of Leasing Companies in Lebanon*, Pamphlet No 6, I (Oct.1, 2005).

⁵⁷ Herbert Smith Freehills, *Lebanon*, in *Middle East: Lending and Taking Security* 32 (2nd ed., May 2014).

⁵⁸ Hawkamah & World Bank, *Lebanon*, in *Survey on Insolvency Systems in the Middle East and North Africa* 35; see also, Alejandro Alvarez de la Campa, *Increasing Access to Credit through Reforming Secured Transactions in the MENA Region*, World Bank 22 (June 2010).

⁵⁹ Herbert Smith Freehills, *supra* n 57, at 32.

⁶⁰ Hala Raphael-Abillama and Sabine El-Khoury, *2013 Project Finance Report: Lebanon*, International Financial Law Review.

⁶¹ Banque du Liban, *supra* n 56, at 7 – 8.

No. As a general rule, the Code of Obligations and Contracts prohibits a transfer of a right if it is prohibited by an agreement between the parties. A transfer of a receivable would be ineffective against both the receivables debtor and third parties unless the receivables debtor has given consent in writing. The exception to this general rule, but only relating to covered receivables, may be found in the Assets Securitization Law, under which receivables may be assigned regardless of any nonassignment clause included in the receivables contract. There is no requirement to notify or seek the approval of the receivables debtor.

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

No. Out-of-court enforcement is not available. The Code of Commerce mandates that enforcement be carried out through the court and forbids extrajudicial enforcement clauses in security agreements. It is also not permissible for the secured creditor to appropriate the pledged collateral. Reports indicate that court proceedings are lengthy and delays customary.⁶²

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. Generally, the law does not recognize a nonpossessory pledge and requires that possession be transferred to the secured creditor or a third party. However, constructive possession is allowed, such as where the keys to the warehouse in which the pledged goods are stored are handed over to the secured creditor. Notwithstanding, a nonpossessory pledge may be created over an enterprise, as well as assets subject to financial leases and vehicles.

7. All or Any of the Debtor's Assets May Be Provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. A debtor may use any of its assets as collateral.⁶³ A company may provide its enterprise (*fonds de commerce*) as collateral for a debt. Since inventory does not form a part of the enterprise, a pledge of inventory will be governed by the Code of Commerce. There is no law in Lebanon that would recognize a security interest over all assets of the debtor, forcing secured creditors to utilize multiple laws if they wish to take a security interest over all assets of the debtor.

⁶² Herbert Smith Freehills, *supra* n 57, at 31.

⁶³ Hawkamah & World Bank, *Lebanon*, *supra* n 58, at 35.

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

No. According to the Law Relating to Real Property, unharvested crops are not considered movable assets. However, neither crops nor livestock are included in the list of movable assets considered immovable by destination. Only livestock used to exploit the land are considered immovable by destination.⁶⁴

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. A security agreement may not provide for the creation of a security interest in future or after-acquired assets and proceeds of collateral, unless the original collateral that generates the proceeds is in the possession of the secured creditor. This is not only because the collateral must be specifically described but also because the law does not allow the creation of a pledge without the transfer of possession. However, a debtor may, with a secured creditor's permission and if the pledge agreement includes such a clause, withdraw and replace the collateral. The pledge of enterprise may not extend to after-acquired equipment and other assets that constitute the enterprise.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The fragmented regime for secured transactions prevents the identification of clear priority rules, therefore resulting in unpredictability. Furthermore, privileges and special statutory preferences, such as employee wages and taxes, take precedence over secured claims.⁶⁵ Certain laws contain priority rules that apply only to competing security interests created under those laws. For instance, the legislative decree relating to the pledge of enterprise determines the priority between a pledge of equipment that becomes an immovable by destination and the right of a mortgagee by the date of registration.

⁶⁴ According to the decision No. I issued by the Court of Beirut on January 9th, 1956, "to be considered immovable by destination, the assets must be owned by the same landlord and must be allocated for the use of the immovable property. As a result, it cannot be seized separately from the land."

⁶⁵ Herbert Smith Freehills, *supra* n 57, at 31.

II. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. Although secured obligations and debts may be described generally⁶⁶ to effectively create a pledge over all the property of a business, the pledge agreement must specify all the assets comprising that business. For the enterprise pledge, every asset constituting the enterprise must be specified; otherwise, the pledge will only consist of the business' signboard, the trade name, the title to lease, the customs, and goodwill.

⁶⁶ World Bank, Doing Business 2017: Lebanon 62 (2016).

SUMMARY OF SECURED TRANSACTIONS MATRIX FEATURES

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	No
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	Yes
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	Yes
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	0
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

No. There is no single law that regulates all security interests in a unitary, functional, and comprehensive manner.⁶⁷ There are several sources of secured transactions legislation: the Civil Code,⁶⁸ the Commercial Code, and the Law Relating to Financial Leasing. Gaps in the Civil Code's provisions may be filled in with Islamic law. The main security device — the possessory pledge — is governed by both the Civil Code and the Commercial Code.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

⁶⁷ World Bank, Doing Business 2017: Libya 47 (2016).

⁶⁸ The Civil Code of 1954, amended in 2016 by the Law No.6-2016.

No. Libyan law has not established a transparent notice-based system for registrations relating to security interests. Although the Commerce Registry has been established, it is not a transparent notice-based registry, and its use is limited to some transactions over companies' enterprise. Registration requires the involvement of the registrar who has the power to verify all information submitted for registration. The transfer of receivables related to the enterprise becomes effective against third parties only upon its registration in the Commercial Registry, even if it has not been notified to or accepted by the debtor. Also, financial leases require registration in a separate registry.

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. There is no unitary registry for all security interests in Libya.⁶⁹ The Commercial Code regulates the Commercial Registry in which some security interests, such as an enterprise pledge (*fonds de commerce*), must be registered. For leased assets, the Law Relating to Financial Leasing creates a registry subdivided into two databases: one to register the lessors and the other to register leasing contracts. Security interests in receivables, other than those relating to the enterprise, do not require any registration.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

No. A security assignment is permissible, as long as this is not prohibited by law, excluded by agreement of the parties, or impossible due to the nature of the debt. The assignment is effective against the receivable debtor and third parties if it has been formally notified to the receivable debtor by a notarized deed or accepted by it. As for the pledge over receivables, it is ineffective against the receivables debtor if it has not been formally notified or accepted pursuant to the rules of transfer detailed in the Civil Code. Also, the pledge is ineffective if the secured creditor is not in possession of the deed evidencing the receivable.

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

No. Self-help remedies are not recognized under Libyan law. In the event of the debtor's default, the secured creditor has to follow the procedures detailed in the Civil Code. Acquisition of the pledged asset in satisfaction of the secured obligation is prohibited by law, and any such clause in the security agreement will be of no effect.

⁶⁹ World Bank, *supra* n 67.

However, it is possible for the debtor to voluntarily surrender the pledged asset after default.

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. In the case of a pledge over the enterprise, the debtor retains possession of the assets that constitute the enterprise (e.g., machinery). Similarly, the debtor may take and retain possession of assets financed through leases. However, the pledge, the general security device, is possessory in nature under both the civil and commercial codes. To be effective against third parties, the pledged asset must be in the possession of the pledgee or an impartial third party.

7. All or Any of the Debtor's Assets May Be Provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. As a general rule, all assets can be used as collateral. Nonetheless, assets that the law prohibits any transactions with cannot constitute collateral. As a guiding rule, under the Civil Code what can be sold in an auction sale can be pledged. A pledged asset can secure the repayment of multiple debts. However, no law expressly recognizes and permits the creation of a single security interest over all assets of the debtor.

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. According to the Civil Code definition of movable and immovable assets, immovables are all fixed assets that no person can move from one place to another without causing damage. Movable assets that the landlord places on the land and that are dedicated to its use (service and exploitation) are immovable by destination. Unlike the other MENA civil codes, there are no detailed provisions on crops and livestock. Also, the Civil Code stipulates that ownership of land is synonymous with ownership of everything above or below the land unless it is otherwise agreed on between the parties.

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. Future assets can be the subject of a security interest the moment they are acquired by the debtor, if the security agreement contains an adequate collateral

description. A pledge can secure the payment of a future debt or a conditional debt. However, it is necessary to identify the exact amount of the debt or a maximum amount in a security agreement. As a general rule, ownership rights extend to the fruits, products, and accessions unless otherwise provided by the law or by an agreement. As a result, a security interest would extend to any proceeds acquired by the owner of the collateral. The rights of the secured creditor also extend to any asset that replaces the pledged object.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The multiplicity of legal sources governing security interests and the absence of a single modern registry prevents the identification of clear and predictable priority rules. Different statutory claims have priority, including not only those mentioned in the Civil Code but also others in special laws, such as legal expenses, taxes, and workers' wages. As a general rule, a notarized document with an exact date is necessary in order to determine the priority of secured creditors holding competing possessory pledges.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. It is sufficient to identify the asset by type. Under the Commercial Code, there is no need for the pledge to be in a written deed or notarized with an exact date. All means of evidence are accepted to prove the existence of a commercial pledge, unless otherwise provided. As for the pledge over enterprise, the Commercial Code requires that it be evidenced by a notarized deed that contains a detailed description of the pledged objects. If there is no detailed description, the pledge will cover the following four elements only: the name, the commercial logo, the brand, and the right to lease.

SUMMARY OF SECURED TRANSACTIONS MATRIX FEATURES

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	No
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	No
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	2
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

No. The Code of Obligations and Contracts governs possessory pledges, and the Code of Commerce governs the commercial pledge that may be taken over the enterprise, tools and equipment, certain commodities, and some receivables.⁷⁰ In addition to these codes, specific laws have been enacted to provide for security devices in individual sectors of the economy, including the Decree of August 27, 1918, regulating the pledge of agricultural products; the Decree of June 27, 1923, relating to the enforcement of pledges in agricultural collateral contracts; and the Decree of 1948 on a pledge of procurement contracts. Furthermore, farm equipment lending is commonly done under the land law because such equipment is treated as immovable.

⁷⁰ See further Mustapha Mourahib & Ouns Lemseffer, *Reforming established secured transactions system: Why and how Morocco is approaching the challenge* in Frederique Dahan (ed.), *Secured Financing in Commercial Transactions* 380-381 (2015).

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Many secured transactions, including pledges over receivables, are not subject to registration in a notice-filing system.⁷¹ Some pledges, such as those over the enterprise, require registration, which, however, is not merely a notice of its potential existence but rather a condition of its effectiveness even against the debtor. In addition, the registrar has the power to confirm the validity of the pledge agreement.⁷²

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. Several registries have been established to register the different types of pledges.⁷³ This is despite the mandate, set forth in the Code of Commerce, to establish a national registry.⁷⁴ Enterprise pledges and pledges over tools and equipment are registrable at the Trade Registry, which is located at the Commercial Court. The registry is paper-based and not centralized, requiring the pledge to be registered in the Commercial Court of the location of the debtor. Registrations are expensive; in most cases, the fee equals 0.5 percent of the secured obligation.⁷⁵ Pledges of shares are registered on the books of the debtors or issuers, which is not a transparent form of notice of such encumbrances.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

No. A security interest in a receivable subject to a nonassignment clause would not be valid. Furthermore, a pledge over receivables requires physical delivery of a document evidencing the receivable to the secured creditor as well as a formal notification of the receivables debtor.⁷⁶

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

⁷¹ USAID Morocco, *Legal Assessment: Registration of Secured Transactions for Movable Property*, 16 (August 2008).

⁷² Mourahib & Lemseffer, *supra* n 70, at 384.

⁷³ See further, EBRD, *Regional Secured Transactions Assessment – Morocco, Non-possessory charge over movable property (pledge)* at <http://www.ebrd.com/legal-reform/where-we-work/morocco.html#anchor1> (last accessed December 2016).

⁷⁴ See further, USAID Morocco, *supra* n 71, at 15 (August 2008) and article 33 of the Code of Commerce.

⁷⁵ Mourahib & Lemseffer, *supra* n 70, at 385.

⁷⁶ *Id.* at 382. See further article 195 of the Code of Obligations and Contract.

No. Out-of-court enforcement is available only for security rights in money, bearer securities, and receivables. The general judicial enforcement framework is set out in the Code of Civil Procedure but is very inefficient.⁷⁷ The judicial process is also time-consuming, expensive, and unpredictable.⁷⁸ Before the collateral is sold in a public auction, its value must be officially assessed, thus increasing the cost of disposal. Acceptance of the collateral in satisfaction of the secured obligation is invalid. An attempt to establish alternative dispute resolution mechanisms for secured transactions has not yet been successful.⁷⁹

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. The pledges governed by the Code of Commerce and the decrees (e.g., the enterprise pledge) allow the debtor to remain in possession of the collateral.

7. All or Any of the Debtor's Assets May Be Provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. In general, any asset may be used as collateral.⁸⁰ The Code of Commerce recognizes an enterprise pledge, which may encumber the elements of a business, including machinery, tools, and intellectual property rights, but it does not extend to future assets.⁸¹ However, there is no device that would allow the debtor to encumber the entirety of its assets.

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

No. Animals and objects placed by the owner on its land for the service and exploitation of the land, including animals used for the exploitation of land and agricultural equipment, are immovable by destination.

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a

⁷⁷ See <http://www.ebrd.com/legal-reform/where-we-work/morocco.html> (last accessed December 2016).

⁷⁸ Alejandro Alvarez de la Campa, *Increasing Access to Credit Through Reforming Secured Transactions in the MENA Region*, 30 (Policy Research Working Paper 5613) (March 2011), available at <http://siteresources.worldbank.org/INTMNAREGTOPPOVRED/Resources/DECMENAFIagshipCollateral.pdf> (last accessed December 2016).

⁷⁹ *Id.* at 28.

⁸⁰ Note that for many tangibles the only form of perfection is their delivery to the secured creditor. Mourahib & Lemseffer, *supra* n 70, at 382.

⁸¹ See further EBRD, *Regional Secured Transactions Assessment – Morocco*, *supra* n 73.

security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. The requirement to identify the collateral in security agreements with a high degree of specificity effectively precludes the security agreement from being able to provide for the extension of a security interest to future assets. The enterprise pledge may also encumber only existing assets. Some exceptions from the general rule exist, such as for pledges of receivables arising from professional activities.⁸²

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The fragmented legal framework with a variety of pledges does not provide predictable priority rules. The unpredictability is further exacerbated by the privileges and special statutory preferences.⁸³ Claims for owed taxes, salaries, and wages enjoy superpriority over the claims of secured creditors.

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. As a general rule, and subject to a few exceptions, security interests may be created over one or more specified assets.⁸⁴ The collateral must be described in a security agreement by the exact quality and nature, weight, and measurements. This requirement of specific collateral description does not apply to assets subject to an enterprise pledge.⁸⁵ The security agreement must also specify the amount of the secured obligation.⁸⁶

⁸² Mourahib & Lemseffer, *supra* n 70, at 383.

⁸³ *Id.* at 389.

⁸⁴ *Id.* at 382.

⁸⁵ de la Campa, *supra* n 78, at 14.

⁸⁶ Mourahib & Lemseffer, *supra* n 70, at 384.

SUMMARY OF SECURED TRANSACTIONS MATRIX FEATURES

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	No
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	Yes
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	1
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

No. There is no single law that regulates all security interests in a unitary, functional, and comprehensive manner.⁸⁷ Security interests are governed by the Civil Code,⁸⁸ Commercial Code,⁸⁹ Companies Law,⁹⁰ and Financial Leasing Law.⁹¹ Gaps in the provisions of the Civil Code and Commercial Code may be resolved by recourse to Islamic law.⁹² The Financial Leasing Law regulates conventional and Islamic leasing

⁸⁷ World Bank, Doing Business 2017: Syria Arab Republic 58 (2016).

⁸⁸ Legislative Decree 84/1949.

⁸⁹ Law 33/2007. The Commercial Code and Companies Law were formerly part of the Civil Code.

⁹⁰ Legislative Decree 29/2011.

⁹¹ Legislative Decree 88/2010.

⁹² Art. 1, paragraph 2, Syrian Civil Code.

transactions,⁹³ while the Commercial Code provides rules on transactions and registration of all rights and deeds pertaining to a business.⁹⁴

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Syria has not established a transparent notice-based system for registrations relating to security interests, so secret liens continue to exist in the economy. Although a commerce registry exists, it is not a transparent notice-based registry, and its use is limited to legal persons formed under the Commercial Code.⁹⁵

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. There is no unitary registry for all security interests in Syria.⁹⁶ The Commerce Registry is a general commercial registry for the purpose of registering the dealings of commercial entities, which, aside from security interests created by such entities, also includes routine functions like recording a change in directors.⁹⁷ In addition, security interests created by way of an assignment over patents or industrial commercial property are required to be registered with the Protection Office in order to be effective against third parties.⁹⁸ Financial leases, unless they relate to immovables, must be registered with a registry maintained by the Ministry of Economy and Commerce. If the lease covers a vehicle, the ministry will send a copy of the registered contract to the competent authority that maintains the car registry.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

No. Under the Civil Code, a person may transfer a right, including the right to collect payment under a receivable, unless the transfer is prohibited by law, agreement of the parties, or the nature of the obligation. Accordingly, a restriction in a contract that gives rise to a receivable would effectively prevent its transfer.

⁹³ Syrian Law Journal, *Finance* at <http://www.syrianlawjournal.com/index.php/main-legislation/finance/#110-6> (last accessed December 2016).

⁹⁴ Jacques El-Hakim, *Syria*, in 13 Yearbook of Islamic and Middle Eastern Law 153 (2006-2007).

⁹⁵ Alejandro Alvarez de la Campa, *Increasing Access to Credit through Reforming Secured Transactions in the MENA Region*, WORLD BANK 14 (June 2010).

⁹⁶ World Bank, *Doing Business 2017: Syria Arab Republic* 58 (2016).

⁹⁷ Jacques El-Hakim, *supra* n 94, at 154-155.

⁹⁸ Art. 32, Patent Law no. 47 of 1946.

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

No. Court action is required to enforce a security interest. Parties to secured transactions cannot avoid judicial enforcement by agreeing to enforce their rights extrajudicially.⁹⁹

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. Syrian law recognizes certain security devices under which the debtor may remain in possession or control of the collateral, including a financial lease and pledge of the enterprise. However, Syrian law does not recognize a general nonpossessory security interest.¹⁰⁰ As well, Islamic law on security generally requires the transfer of possession for a security interest to be effective.¹⁰¹

7. All or Any of the Debtor's Assets May Be Provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. Under the Civil Code, any asset may be used as collateral for a loan unless its transfer is statutorily prohibited. Both tangible and intangible assets may be pledged. However, Syrian law does not recognize a security device that would allow a security interest in the entirety of the debtor's assets.

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Livestock and crops may be provided as collateral independently from land. The Civil Code stipulates that ownership of land is synonymous with ownership of everything above or below the land, so that the right of ownership stretches to all things that cannot be separated from the land without perishing, deteriorating, or otherwise being altered.¹⁰² However, the Civil Code also provides that ownership of soil may be separated from ownership of things above or below the soil by law or agreement.¹⁰³

⁹⁹ Alejandro Alvarez de la Campa, *supra* n 95, at 12; World Bank, *Doing Business 2017: Syria Arab Republic* 58 (2016).

¹⁰⁰ Alejandro Alvarez de la Campa, *supra* n 95, at 12 & 16.

¹⁰¹ Nicholas H.D. Foster, *The Islamic Law of Real Security*, 15(2) *Arab Law Quarterly* 131, 136 – 138 (2000).

¹⁰² Dan E. Stigall, *The Civil Codes of Libya and Syria: Hybridity, Durability, and Post-Revolution Viability in the Aftermath of the Arab Spring*, 28 *Emory International Law Review* 283, 322-323 (2014).

¹⁰³ *Id.* See also Mohammad Rashrash Mustafa, *Loan Collateral in Rural Finance – Experiences, Issues and Solutions in the Near East and North Africa*, 17 *Uniform Law Review* 337, 340 (2012).

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. A security agreement cannot provide for the creation of a security interest in future assets.¹⁰⁴ Furthermore, Islamic law generally requires that the pledged property be in existence at the time of creation of the security agreement, thus eliminating the possibility to create a pledge over future property.¹⁰⁵ As regards proceeds, under the Syrian Civil Code, the right of ownership comprises all the fruits, accessories, and products.¹⁰⁶ Accordingly, a security interest that is derivative of the ownership rights may extend to fruits and products acquired by the debtor.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The combination of a fragmented legal framework for secured transactions and a nonexistent unified collateral registry does not allow for a predictable determination of priority among competing security interests. Besides, the law elevates certain statutory claims, such as taxes and employee wages, above the claims of secured creditors, a situation that further exacerbates unpredictability.¹⁰⁷

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. The law requires that the collateral and obligations be specifically described in agreements.¹⁰⁸ The law thus does not recognize the use of a broad pool of assets as collateral without a specific description of each asset.¹⁰⁹ Similarly, the security agreement must state the exact amount being secured and not a maximum sum. Islamic law also requires precision in collateral descriptions.¹¹⁰

¹⁰⁴ Alejandro Alvarez de la Campa, *supra* n 95, at 12 & 16; World Bank, *Doing Business 2017: Syria Arab Republic* 58 (2016);

¹⁰⁵ Foster, *supra* n 101, at 140.

¹⁰⁶ Stigall, *supra* n 102, at 322.

¹⁰⁷ Alejandro Alvarez de la Campa, *supra* n 95, at 25.

¹⁰⁸ World Bank, *Doing Business 2017: Syria Arab Republic* 58 (2016).

¹⁰⁹ Alejandro Alvarez de la Campa, *supra* n 95, at 36.

¹¹⁰ Foster, *supra* n 101, at 140.

SUMMARY OF SECURED TRANSACTIONS MATRIX FEATURES

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	No
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	No
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	3
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

No. The Code of Real Rights governs possessory pledges, and the Code of Commerce governs the commercial pledge that may be taken over an enterprise and its tools and equipment. In addition to these codes, specific laws have been enacted, including the Law Related to the Pledge of Tools, Machinery, and Professional Equipment; the Law Relating to the Pledge and Fiduciary Assignment of Accounts Receivable; and the Law Relating to Financial Leasing.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. Many secured transactions, including pledges over receivables, are not subject to registration in a notice-filing system. For receivables, there is a central registry maintained by the Central Bank, where factoring companies register transfers of receivables and from which information can be obtained. However, it is neither reliable nor accessible to the public, and the registrations therein have no legal effect. The

notice-filing nature is also at odds with the requirement to register pledges as a condition of their effectiveness, even against the debtor in the case of a pledge over an enterprise. Financial leases relating to materials and equipment must be registered by the lessor in a special registry held in the court according to the Law Relating to Financial Leasing. Pledges over an enterprise also require registration at the Trade Registry.

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. Several registries have been established to register the different types of pledges. Enterprise pledges are registrable at the Trade Registry, which is located at the Commercial Court. The registry has an electronic database; however, it is not centralized, requiring the pledge to be registered in the Commercial Court of the location of the debtor. In addition, as mentioned above, factoring companies generally register transfers of receivables with the Central Bank Registry, and financial leases relating to materials and equipment are registered in a special court registry. Pledges of bank accounts require registration of an original agreement with the competent tax office.¹¹¹ As for registration fees, the Tunisian legal system requires all contracts to be registered with the tax administration, subject to a fee based on the loaned amount or the collateral value, as a precondition of their registration with the competent registry, such as the Trade Registry. The actual registration fees charged by the competent registries vary but generally are flat and relatively reasonable. The court registry for financial leases relating to materials and equipment does not charge any fees because the substantive law does not contemplate payment of registration fees.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

No. Nonassignment clauses effectively prevent the transfer of a receivable. For instance, when a person sells an asset to a buyer on credit, the seller may not transfer the receivable without the specific consent of the buyer.¹¹² Furthermore, a pledge over receivables requires physical delivery of a document creating or evidencing the receivable to the secured creditor according to the Law Relating to the Pledge and Fiduciary Assignment of Accounts Receivable.

¹¹¹ EBRD, *Commercial Laws of Tunisia*, 49 (March 2013).

¹¹² Dan E. Stigall, *Law and the Lodestar: Tunisian Civil Law and the Task of Ordering Plurality in the Aftermath of the Jasmine Revolution*, 7(1) *Journal of Civil Law Studies*, 37 (2014).

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

No. The general judicial enforcement framework is set out in the Code of Civil and Commercial Procedures, which is very inefficient due to its length and complication. However, fast-track procedures for the recovery of “certain liquid and due debts” are available.¹¹³ The secured creditor must seek a court order even if that creditor has ownership of the collateral, e.g., a lessor who retains ownership of the collateral until last payment. Even for transfers of receivables, the applicable laws do not contemplate extrajudicial collection, forcing the factors and secured creditors to seek a court order. Furthermore, assets subject to an enterprise pledge must be sold as a whole rather than individually.¹¹⁴

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. The pledges governed by the Code of Real Rights, the Code of Commerce, and the other laws allow the debtor to remain in possession of the collateral.

7. All or Any of the Debtor’s Assets May Be Provided as Collateral: Whether all or any of the debtor’s assets may be provided as collateral

Yes. As a general rule, all of the debtor’s movable assets may be provided as collateral. A general rule in the Code of Obligations and Contracts prohibits any transfer of certain assets that cannot be delivered to the other party, such as fishes in the sea or birds in the sky.

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

No. According to the Code of Real Rights, “growing crops through the roots and fruits that are not yet collected are immovable. As soon as they are cut and detached, they become movable.” Also, livestock are immovable by destination by virtue of the Code of Real Rights.

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently

¹¹³ Alejandro Alvarez de la Campa, *Increasing Access to Credit through Reforming Secured Transactions in the MENA Region*, Policy Research Working Paper 5613, 30 (2013).

¹¹⁴ EBRD, *supra* n 111, at 48.

does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. A pledge agreement does not require any notarization; it can be concluded in the form of a private document. However, it requires legalization of signatures for the purpose of certainty of the date as against third parties. The enterprise pledge may encumber different movable assets such as materials and equipment used in the business, as well as intellectual property rights. However, it does not extend to inventory.¹¹⁵ Future rights, such as to payment of receivables, may not be encumbered.¹¹⁶ The legal framework does not contain a specific rule that would enforce clauses in security agreements purporting to create security interests in future assets. Proceeds may be provided as collateral according to the Code of Real Rights.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The fragmented legal framework with its variety of pledges does not provide predictable priority rules. The unpredictability is further exacerbated by the existence of privileges, both general and specific, to which security interests are subordinated.¹¹⁷

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

No. As a general rule, a simple description is not allowed. Both assets and obligations must be described specifically and cannot fluctuate.¹¹⁸ The description should identify the assets sufficiently by their quantity, weight, or quality. However, the enterprise pledge does not require specific description of all assets that constitute the enterprise pledged as collateral.¹¹⁹ The amount of the secured obligation or the maximum amount that the security covers must be indicated, according to the Code of Real Rights.

¹¹⁵ *Id.*

¹¹⁶ Stigall, *supra* n 112, at 25.

¹¹⁷ See further EBRD, *supra* n 111, at 50.

¹¹⁸ *Id.* at 48.

¹¹⁹ Alvarez de la Campa, *supra* n 113, at 14.

SECTION NO. 12

WEST BANK AND GAZA

SUMMARY OF SECURED TRANSACTIONS MATRIX FEATURES

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	Yes
2. Elimination of Secret Liens	Yes
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	Yes
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	Yes
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	Yes
10. Predictable Priority Rules	Yes
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	Yes
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	0
Level of Reform Needed	Partial

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

I. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

Yes. In April 2016, the Palestinian Authority enacted a new Secured Transactions Law.¹²⁰ It follows the functional approach, applying also to sales with reservation of ownership, financial leases, commercial consignments, and outright transfers of receivables. The Decree Law No (6) of 2014 on Financial Leasing regulates leasing transactions. Previously, the commercial law of the West Bank and Gaza included English common law, the Jordanian Commercial Code,¹²¹ Israeli law, and several British and Egyptian

¹²⁰ See World Bank, *Reforms Underway to Boost Palestinian Business Environment* (Nov. 16, 2016), at <http://www.worldbank.org/en/news/press-release/2016/11/14/reforms-needed-to-boost-palestinian-business-environment> (last accessed December 2016).

¹²¹ For instance, the companies registry is operated under the Jordanian Law of Companies No. 12 of 1964. See Paltrade, *Prerequisites Registration*, at https://www.paltrade.org/en_US/page/prerequisites-registration (last accessed December 2016).

mandate ordinances, such as the British Mandate Bankruptcy Ordinance.¹²² In some commercial transactions, the laws applied in Gaza differed from those in the West Bank.¹²³

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

Yes. The Secured Transactions Law provides for the establishment of a modern collateral registry, which has already been launched.¹²⁴ The law also recognizes possession and automatic perfection of a security interest in newly acquired consumer goods as the two alternatives to notice registration. Under the law, the records of the registry are accessible publicly by electronic means. Registration information must include only the identities of debtor and secured creditor, a collateral description, and the duration of effectiveness of the registration.

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. While a modern and electronic registry for security interests in movable property collateral has been established, the Secured Transactions Law expressly excludes security interests in movable property subject to registration in a specialized registry, including motor vehicles and securities. The new registry does not charge any fees for searches and the fees for other services are set out in the regulations. The fee for registrations is the equivalent of US\$7. Security interests over motor vehicles will continue to be registered in the motor vehicle registry, which is a centralized electronic registry, but accessing it for the purpose of conducting searches is difficult.¹²⁵ Although security interests taken over shares of a company that is registered on the Palestine Exchange may be noted with the Exchange, such registrations provide no legal basis or support for a claim of priority.¹²⁶

¹²² A. F. & R. Shehadeh Law Firm, *Business Law in Palestine*, at <http://www.shehadehlaw.com/businessLaw.htm> (last accessed December 2016); International Trade Administration, *Doing Business in the West Bank: Market Challenges*, at http://2016.export.gov/westbank/doingbusinessinthewestbank/index.asp#P26_2917 (last accessed December 2016).

¹²³ International Trade Administration. *supra* n 122; USAID, *Study on Options, Management and Enforcement of Collateral for Microfinance Loans in the West Bank and Gaza Strip*, Field Report No. 4, 24 (Nov. 2007).

¹²⁴ See <http://registry.mne.gov.ps/> (last accessed December 2016).

¹²⁵ Hawkamah & World Bank, *Palestine*, in *Survey on Insolvency Systems in the Middle East and North Africa* 43; Alejandro Alvarez de la Campa, *Increasing Access to Credit through Reforming Secured Transactions in the MENA Region*, World Bank 22 (June 2010).

¹²⁶ USAID, *supra* n 123, at 25. Even security rights registrations with the companies' registry or a company's register of shareholders have no legal effect. *Id.*

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

No. The Secured Transactions Law does not contain any specific clause that would override any contractual restrictions on the transfer of receivables. It does not require the consent or even a notification of the receivables debtor as a condition for the effectiveness of a transfer. Under prior law, the effective creation of a security interest in a receivable required the consent of the receivables debtor. The secured creditor, as a matter of practice, usually enters into a tripartite agreement with the assignor/debtor and the receivables debtor effectuating a transfer of the receivable. Failure to do this would also complicate enforcement of any right in receivables.¹²⁷

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

Yes. The Secured Transactions Law allows secured creditors to utilize any remedies set out in that law, any other law, or the security agreement. Specifically, extrajudicial enforcement is authorized as against receivables, documents and instruments, and bank accounts. To effectuate extrajudicial repossession of tangible collateral, the debtor must have agreed to it in a security agreement and the secured creditor's actions must not "breach the peace." The secured creditor may also acquire the collateral in satisfaction of the secured obligation by appropriating it. The court will be required to supervise the enforcement process if the secured creditor breaches any of its duties under this chapter of the law. Before the adoption of the new Secured Transactions Law, although court action was not necessary for the enforcement of a notary deed, as a practical matter such security interests were enforced through the execution department of a court.¹²⁸ Enforcement of any other security interest required court intervention.¹²⁹

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. Prior law did not recognize a general nonpossessory security interest.¹³⁰ Debtors could remain in possession of motor vehicles, assets acquired under financial leases, as well as assets that comprise the enterprise subject to a pledge. In daily practice, lenders hesitated to take possession of collateral due to expensive costs of storage or collateral managers, thereby hampering the use of movable property security.¹³¹ The new Secured

¹²⁷ *Id.* at 36.

¹²⁸ A. F. & R. Shehadeh Law Firm, *supra* n 122.

¹²⁹ See Palestinian Judicial Training Institute, *Mortgage Lending in the Palestinian Territories: Fundamentals for Judges and Lawyers* (Vol. I, 2012) 63.

¹³⁰ Alejandro Alvarez de la Campa, *supra* n 125, at 12. See also World Bank, *Doing Business 2017: West Bank And Gaza* 62 (2016).

¹³¹ Timothy Nourse, *Financing the Small-Business Sector in Palestine: Current Constraints, Future Solutions*, *This Week in Palestine* Issue No. 133, 26 (May 2009).

Transactions Law allows the creation of a nonpossessory pledge whereby registration is the functional equivalent of taking possession.

**7. All or Any of the Debtor's Assets May Be Provided as Collateral:
Whether all or any of the debtor's assets may be provided as collateral**

Yes. Under the Secured Transactions Law, any movable property defined as any tangible and intangible asset, including fixtures (e.g., equipment physically attached to a building) may be taken as collateral. Already owned consumer goods may not be provided as collateral for a loan. Previously, in theory, a debtor could provide any of its assets as collateral for a loan, but the unavailability of a general nonpossessory security interest effectively prevented debtors from using any or all assets as collateral.

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

Yes. Under the Secured Transactions Law, livestock and crops clearly constitute movable property. Furthermore, the law provides special priority rules for i) acquisition security interests in livestock and ii) general security interests in crops, including those growing on the land. Even under the prior law, livestock and crops could be provided as collateral independently from land.¹³²

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

Yes. The Secured Transactions Law provides for the automatic extension of a security interest into proceeds, unless the parties have agreed otherwise. If the proceeds are not cash proceeds, such as money or deposit accounts, or are not covered by a registered notice, the third-party effectiveness lapses 15 days after they have been acquired unless the registered notice is amended or the security interest made otherwise effective against third parties. Under the prior law, security rights in movable property must be created before a notary public.¹³³

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

¹³² USAID, supra n 123, at 36 – 37; USAID, *The Palestinian Economy*, Agbee Snapshot (Jan. 2012) 5.

¹³³ A. F. & R. Shehadeh Law Firm, supra n 122.

Yes. The Secured Transactions Law provides a clear rule that allocates priority according to the time of registration or other form of third-party effectiveness (e.g., the time of taking possession). Security interests effective against third parties have priority over those that remain effective only against the debtor. The law also contains i) special priority rules, such as those applicable to acquisition security interests and fixtures; ii) priority rules applicable to nonconsensual claims, such as the rights of retention; and iii) rules that allow third-party buyers and transferees to take free of the security interest.

II. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligations

Yes. Under the Secured Transactions Law, a security agreement that must be executed in writing allows a general or specific description of the collateral. Specific description is required only for consumer goods financed under an acquisition security interest.

SUMMARY OF SECURED TRANSACTIONS MATRIX FEATURES

Secured Transactions Matrix Feature	Feature Present in the Economy
1. Single Law That Regulates All Security Interests	No
2. Elimination of Secret Liens	No
3. One Registry for All Security Interests (including electronic capabilities and low fees)	No
4. Effective and Efficient Transfer of Interests in Receivables	No
5. Out-of-Court Enforcement	No
6. Debtor May Retain Possession or Control of Collateral	Yes
7. All or Any of the Debtor's Assets May Be Provided as Collateral	Yes
8. Crops and Livestock May Be Provided as Collateral Independently from Land	No
9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral	No
10. Predictable Priority Rules	No
11. Law Allows for General/ Simple Description of Collateral and Secured Debts or Obligations	No
Country's Score in the 2017 World Bank Doing Business-Getting Credit Strength of Legal Rights Index	0
Level of Reform Needed	Comprehensive

ANALYSIS OF SECURED TRANSACTIONS MATRIX FEATURES

1. Single Law That Regulates All Security Interests: Whether a single law regulates all security interests in a unitary, functional, and comprehensive manner

No. There is no single law that regulates all security interests in a unitary, functional, and comprehensive manner.¹³⁴ Elements of the Commercial Code, the Civil Code, the Code of Civil Procedure, Commercial Companies Law, Islamic Law, leasing law, and motor vehicle laws apply to security interests in Yemen. The main security device is the pledge governed by the Civil Code.

2. Elimination of Secret Liens: Whether “secret liens” have been eliminated through a transparent notice-based system

No. There is no means of ascertaining the existence of potentially existing encumbrances. This is primarily due to the absence of a functional and unitary secured transactions legal framework and centralized collateral registry through which potential

¹³⁴ World Bank, Doing Business 2017: Yemen, Rep. 55 (2016).

lenders can ascertain the existence of prior security interests.¹³⁵ For instance, retentions of title may be used to secure obligations but do not require any publication in a registration system.¹³⁶ Financial leases are subject to registration in the Registry of Financial Leases and Movable Assets (Registry of Leases) maintained by the Ministry of Industry and Commerce.

3. One Registry for All Security Interests (including electronic capabilities and low fees): Whether the economy has established a single unitary registry for all security interests, and whether that registry has electronic capabilities and is characterized by low fees

No. There is no central registry for the registration of notices with respect to security interests. Pledges and floating charges are required to be notarized and registered with the Registrar of Documents.¹³⁷ Failure to comply with these formalities will render the security interest ineffective and unenforceable against the debtor and third parties. A registration fee of 0.2% of the amount of the secured obligation is assessed.¹³⁸ The alternative to registration of the security agreement in Yemen has been to execute the security agreement abroad and notarize same through the Yemeni Embassy.¹³⁹ Even though local courts recognize this as a valid form of perfection, it does not provide transparency. The Registry of Leases is accessible electronically. Pledges over the enterprise must be registered with the Commerce Registry.

4. Effective and Efficient Transfer of Interests in Receivables: Whether interests in receivables can be transferred effectively and efficiently, notwithstanding nonassignment clauses in underlying contracts

No. Under the Civil Code, a person may transfer his/her rights unless it is prohibited by the law, or by an agreement between the parties, or by the nature of the right to be transferred. Accordingly, an agreement between the assignor-debtor and the receivables debtor restricting the transfer of a receivable would effectively prevent the creation of a security right in that receivable.

5. Out-of-Court Enforcement: Whether efficient enforcement mechanisms are available, including out-of-court enforcement

No. Enforcement of security interests requires court intervention, and parties cannot contractually agree on a different form of enforcement.¹⁴⁰ Usually, if the defendant does

¹³⁵ Hawkamah & World Bank, *Yemen*, in *Survey on Insolvency Systems in the Middle East and North Africa* 55; See also Alejandro Alvarez de la Campa, *Increasing Access to Credit through Reforming Secured Transactions in the MENA Region*, World Bank 17 & 36 (June 2010); World Bank, *Doing Business* 2017, *supra* n 134.

¹³⁶ Hawkamah & World Bank, *supra* n 135.

¹³⁷ Herbert Smith Freehills, *Yemen*, in *Middle East: Lending and Taking Security* 57 (2nd ed., May 2014); Hawkamah & World Bank, *supra* n 135.

¹³⁸ Herbert Smith Freehills, *supra* n 137, at 57.

¹³⁹ *Id.*

¹⁴⁰ *Id.* and World Bank, *Doing Business* 2017, *supra* n 134.

not contest the claim, a decision may be issued in a matter of months, but this is not often the case and enforcement proceedings regularly take years.¹⁴¹

6. Debtor May Retain Possession or Control of Collateral: Whether the law recognizes nonpossessory security interests allowing the debtor to retain possession or control of collateral

Yes. A nonpossessory security interest may be created in the property of a debtor, such as under a floating charge or enterprise pledge.¹⁴² Fishing boats and motor vehicles, including trucks and tractors, may be used to secure obligations due to the presence of registration mechanisms for these assets under the laws applicable to them.¹⁴³

7. All or Any of the Debtor's Assets May Be Provided as Collateral: Whether all or any of the debtor's assets may be provided as collateral

Yes. Technically, under the Civil Code, any assets may be used as collateral. The Civil Code pledge may be used to encumber both tangible and intangible assets. However, no Yemeni law allows the creation of a security interest over all or any of the debtor's movable property.¹⁴⁴ The pledge over the enterprise under the Commercial Code may encumber a significant proportion, though not all, of the debtor's assets.

8. Crops and Livestock May Be Provided as Collateral Independently from Land: Whether crops and livestock may be provided as collateral independently from land

No. Crops cannot be pledged as collateral separate from land.¹⁴⁵ Under the Civil Code, livestock is considered as immovable by destination if they are "intended to be used for exploitation of the land."

9. Future/After-Acquired Assets and Proceeds May Be Provided as Collateral: Whether the law provides for a simple creation of a security interest in assets with respect to which the debtor currently does not have the power to dispose of (e.g., whether future/after-acquired assets and proceeds may be provided as collateral)

No. It is not possible to encumber future assets and proceeds. Clauses in security agreements that would provide for an extension of the security interest to future assets are not recognized as valid, and a security interest cannot automatically extend to

¹⁴¹ Herbert Smith Freehills, *supra* n 137, at 57.

¹⁴² *Id.*

¹⁴³ Mohammad Rashrash Mustafa, *Loan Collateral in Rural Finance – Experiences, Issues and Solutions in the Near East and North Africa*, 17 Uniform Law Review 337, 339 (2012).

¹⁴⁴ Alvarez de la Campa, *supra* n 135, at 16.

¹⁴⁵ Mohammad Rashrash Mustafa, *Loan Collateral in Rural Finance – Experiences, Issues and Solutions in the Near East and North Africa*, 17 Uniform Law Review 337, 340 (2012).

proceeds of collateral. The Civil Code specifically prohibits the pledge of crops to be grown and unborn livestock.

10. Predictable Priority Rules: Whether the law provides clear, predictable priority rules among competing security interests and other claims (balancing of parties' interests)

No. The fragmented legal framework for creating and perfecting security interests as well as the absence of a centralized collateral registry results in unpredictability. For instance, the possibility of executing and notarizing the document abroad at the Yemeni Embassy undermines the predictability of the secured lending legal framework. Moreover, the existence of privileges and statutory preferences, such as taxes, government charges, and labor claims, further negatively affects the priority of secured claims.¹⁴⁶

11. Law Allows for General/Simple Description of Collateral and Secured Debts or Obligations: Whether the law allows for general/simple description of collateral and secured debts or obligation

No. The law does not permit the simple or general description of collateral or secured obligations. Yemen's law does not allow for the use of a broad pool of assets as collateral without a specific description of each asset to be used as collateral.¹⁴⁷ However, some descriptions without a high degree of specificity, such as "3,000 Dell laptops, Model 123," would be sufficient.

¹⁴⁶ Herbert Smith Freehills, *supra* n 137, at 57.

¹⁴⁷ Alvarez de la Campa, *supra* n 135, at 16 & 36.

CONCLUSIONS AND RECOMMENDATIONS

This report illustrates that the subject MENA economies' secured transactions frameworks, other than that of West Bank and Gaza, fall well short of international best standards. Anecdotal information indicates that a few MENA economies have engaged in some reform activity, but these projects have either not been completed or are in a form that is not conducive to increasing access to secured credit. Clearly, in terms of both the reform activity and the quality of the actual reforms as measured against international best standards, the MENA region is significantly behind global developments.

The degree of misalignment is most pronounced for the first three features of the MENA Secured Transactions Assessments Matrix — a single law, no secret liens, and one registry. Regarding the first feature, not only are the laws many, they are also outdated, often recognizing the possessory pledge as the sole security device. Over the decades, MENA economies have enacted specific statutes to recognize nonpossessory security interests that are, however, limited to specific assets (e.g., the enterprise pledge) or borrowers (e.g., formally registered companies). Many secret liens persist, primarily with respect to transfers of receivables, which do not require any form of registration. Retentions of title are also generally not subject to any form of public notice. All MENA economies have established some registries that record security devices over specific assets, such as motor vehicles. Some have multiple specialized registries, such as for machinery pledges, and many utilize the registry of companies to record security devices created by companies only. Furthermore, most of these registries are not easily accessible, providing access only by paper-based (physical) means or charging fees that are based on the amount of the secured obligation.

All the subject MENA economies failed to meet the fourth feature (efficient and effective transfer of interest in receivables), which has been designed to measure the degree of collateralization available for receivables. The override of contractual restrictions on transfers of receivables may be particularly useful for transactions secured with pools of receivables where assessment of every individual receivable may not be practicable or cost-effective. Currently, MENA laws generally require a notification to the receivables debtor as a condition for the transfer to attain third-party effectiveness. For the most part, mere notification is not sufficient, and an express consent to the transfer from the receivables debtor must be obtained as well. Concerning the fifth feature, out-of-court enforcement, only the two recently enacted laws in Egypt and West Bank and Gaza authorize secured creditors to enforce their rights extrajudicially. A few legal frameworks allow the debtor to consent to extrajudicial enforcement but only after the default on the secured obligation. In the

absence of extrajudicial remedies and efficient alternative dispute resolution mechanisms such as arbitration, enforcement of security interests remains a challenge in MENA.

The subject economies recorded positive scores with respect to the matrix' sixth feature, the ability of the debtor to retain possession or control of the collateral. While a few economies specifically recognize nonpossessory security interests, most recognize some specific security devices, such as enterprise pledges and financial leases, that allow the debtor to remain in possession of the collateral. Nonetheless, if this feature measured the availability of a general nonpossessory security interest, all the evaluated economies would fail, with the exception of the West Bank and Gaza. Furthermore, under the existing frameworks, it is difficult to structure transactions allowing the debtor to retain control over the collection of receivables because their transfer requires the consent of the receivables debtor who, after the notification of transfer, is also required to remit payments directly to the secured creditor.

As with the preceding feature, with respect to the seventh feature — whether all or any of the debtor's assets may be provided as collateral — all the assessed economies scored favorably. However, other than West Bank and Gaza, all would fail if this feature measured the ability of the secured creditor to take a security interest in all or any of the debtor's assets under a single agreement and law. Construction of an "all assets" deal would thus require application of multiple laws, which unduly increases the cost of such transactions.

For feature number 8, many MENA economies classify growing crops as well as livestock as immovable assets. Unless the civil codes allow the parties to agree otherwise, a security interest in these assets may be taken only as part of a mortgage loan, invariably bringing into play the status of land tenure rights (as it affects secured financing for agriculture) in most of the subject economies. The uncertainty of rights to the land thus effectively prevents the collateralization of these assets.

For the ninth feature, the creation of security rights in future assets, automatically when they are acquired by debtors, is inhibited by the requirement to describe the collateral in security agreements specifically. Some MENA laws even contain a specific prohibition against clauses in security agreements that would provide for the creation of security interests in future assets. While the general concept of ownership extends to any fruits and replacements of the asset, thus entitling the secured creditor to claim the proceeds, the notion of proceeds is narrower compared with international best standards that include both natural and civil fruits within the notion of proceeds. Accordingly, whereas some MENA laws would meet the requirements measured under this feature, their alignment with the international best standards would not be absolute.

The absence of a single law and a registry also has a negative impact on the predictability of priority rules (feature number 10), forcing potential secured creditors and buyers of assets to examine multiple laws and registries that in some cases have not even been established. All MENA laws give priority to certain claims, such as to the wages of workers or tax debts. If clearly stated in the legal framework, such nonconsensual claims

would not undermine the predictability of the priority regime. But it should be noted that the World Bank's Doing Business Report assigns higher marks to those secured transactions regimes that have given priority to secured creditors. MENA economies should carefully examine the policies for these claims that enjoy superpriority, especially tax debts, and decide to what extent their preservation would impede or facilitate access to secured credit.

Finally, a number of MENA economies failed to satisfy the standard measured under the matrix' last feature (general/simple description of collateral and secured debts or obligations). Specific descriptions of collateral and secured obligations are reflective of the traditional transactions secured with a single fixed asset, such as land or a motor vehicle. However, such requirements are impractical for fluctuating collateral, such as inventory, crops, and receivables. A few MENA economies have already relaxed this general requirement of specificity but only with respect to certain types of security devices, e.g., enterprise pledges.

Based on the analysis in this report, the MENA economies may be divided into two groups: i) those whose legal frameworks require a partial reform to fully align with the international best standards and ii) those whose legal frameworks require a comprehensive reform. With respect to the first group of MENA economies, the degree of partial reform varies between Egypt, on the one hand, and West Bank and Gaza, on the other, because the former requires a much more substantive reform. West Bank and Gaza could serve as a regional model, both for the legal framework and the collateral registry.

MENA economies should consider reforming their secured transactions frameworks along the lines set forth in the UNCITRAL Model Law. The design and implementation of actual reforms on the ground should also take into account each economy's credit practices and markets, the origins and defining institutions of their respective legal frameworks, and other local conditions.

MENA economies should also learn from the experience of many other economies that have successfully reformed their frameworks. It would be useful for reforming MENA economies to familiarize themselves with some of the failures that necessitated modifications of new secured transactions laws shortly after their enactment and implementation in some countries (e.g., Ghana and Peru).

Moreover, regional cooperation would be further enhanced with the ratification of the United Nations Convention on the Assignment of Receivables in International Trade, which provides modern, predictable, and uniform choice of law and substantive rules on selling or using receivables as collateral in cross-border transactions.¹⁴⁸ International

¹⁴⁸ States would also benefit from implementing additional instruments on secured transactions as set forth in the UNCITRAL, Hague Conference and Unidroit Texts on Security Interests: Comparison and Analysis of Major Features of International Instruments Relating to Secured Transactions, available at http://www.uncitral.org/uncitral/en/uncitral_texts/security/2011UNCITRAL_HCCH_Unidroit_texts.html (last accessed March 2017).

best standards such as those reflected in the international model are based on the Convention's fundamental principles so its ratification would be complementary to modernization of the legal framework governing domestic transactions. The ratification would further strengthen commercial ties among MENA countries and significantly reduce impediments for exporters and importers to obtain low-cost credit, particularly MSMEs.

ANNEX A. EFFECTS OF SECURED LENDING REFORMS FOR WOMEN-OWNED MSMEs

Secured transactions reforms have had a measurable impact on a number of economies that have experienced growth in access to secured credit, particularly for micro, small and medium-sized enterprises (MSMEs). In many developing economies, MSMEs are unable to access credit because they do not have collateral that financial institutions expect, i.e., immovables. Moveable assets rather than land often account for most of the capital stock of MSMEs. According to the World Bank, in the developing world, 78 per cent of the capital stock of businesses is typically in movable assets such as machinery, equipment or receivables, and only 22 percent in immovable property. But in many economies, movable property is unacceptable to lenders because the law does not provide sufficient protections. These challenges are not only faced by women-owned MSMEs, but they are generally greater for women than men. Women's access to collateral and property rights can be hindered by property, contract, identity, inheritance,, marriage and other laws that frequently reduce women's access to assets by reinforcing discriminatory traditional stereotypes and norms. Globally, financial institutions' portfolios of loans with women-owned MSMEs tend to be significantly lower than the overall number of women-owned MSMEs in their target markets would suggest.

An efficient secured transactions and collateral registry regime can help overcome some of these hurdles for MSMEs and can be a particular advantage for women-owned MSMEs. Modernized collateral regimes expand the types of assets that can be used as security to all tangible (inventory, crops and livestock, vehicles, machinery and equipment) and intangible (accounts receivable, shares, deposit accounts, intellectual property rights) assets.

Modern secured transaction laws also increase the availability of credit and reduce its cost, by ensuring that lenders can collect debt and enforce their rights in moveable property collateral through a timely and inexpensive process. Reforming a country's legal framework for secured transactions can help businesses — particularly women-owned MSMEs— leverage assets into capital for investment and growth.

On March 13th and 14th, 2017 the USAID Middle East Bureau in partnership with the USAID E3 Office and the U.S. State Department held the MENA Secured Transaction Reform Workshop in Nicosia, Cyprus. The objective of the workshop was to build the capacity of key government officials from the Middle East and North Africa (MENA) region on how they can pursue and operationalize secured transaction reforms to increase access to finance and achieve further economic growth in their countries. During the two-day workshop, participants were able to hear best practices and lessons learned from countries who have successfully implemented modernized secured

transaction laws such as Colombia and Ghana. These countries offer two examples where MSMEs, specifically women-owned MSMEs, have been positively affected by reforms and are now more significant players in the formal financial sector, gaining an ability to access finance that would have not otherwise been possible due to modernized secured transaction legislation.

Colombia

The 2014 adoption of Colombia's modern secured transaction registry system led to more loans registered in the first 6 months than previously registered in total for the past 30 years. **Since the launch of the registry, access to finance for women has increased by 39 percent.** The collateral permitted under the new law included a wide variety of assets that were unlikely to have supported loans under the prior legal regime. Borrowers are now able to obtain loans by using collateral resources such as inventory, machinery and crops. Since the registry went live in March 2015, there have been over one million registrations, valued at more than \$93 billion. Over 10 percent of these loans represent new credits. More than 100 financial institutions are participating in the collateral registries. Some of Colombia's largest banks have provided loans secured by movable collateral, including embroidery machines, milking equipment and rice crops. Colombia has soared to number 2 in the world for ease of getting credit in the 2017 World Bank's Doing Business as compared to their rank of 73 in 2014.

Ghana

Ghana implemented the first modern collateral registry in Africa in 2010. **As of 2017, more than \$14,000 million in funding was provided to more than 13,000 SMEs and 40,000 microenterprises, including 70 percent owned by women.** After the creation of the collateral registry, financial and nonfinancial institutions expanded their loan operations to MSMEs in Ghana. Additionally, more than 63,000 registrations have taken place. Of them, 21 percent were SMEs and 66 percent were microenterprises.

Inclusiveness: a key theme in economic growth

Existing constraints to finance for women (who constitute approximately 50 percent of the human population) results in money being left on the table by banks, other lenders, and revenue authorities. This is unused capital that could be financing the growth for formal and informal of women-owned SMEs while increasing revenue for banks, leasing companies, and tax collectors. Creating a regulatory environment that permits greater participation by women leads to more stable, robust growth. . Efforts by countries such as Colombia and Ghana have shown that secured transaction reform can lead to not only increased access to finance but foster a more inclusive economy that can create more jobs, increase foreign investment, improve credit market competitiveness and further drive sustainable economic growth.

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United States Agency for International Development

1300 Pennsylvania Avenue, NW

Washington, D.C. 20523

Tel.: (202) 712-0000

Fax: (202) 216-3524

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